FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Watford, sitting at 10 Alfred Place, London WC1E 7LR

HMCTS Code (Paper; video; audio)		**Video**
Tribunal reference		**CAM/26UL/LSC/2019/0073 and CAM/26UL/LIS/2020/0004 P**
Court claim number	**:**	**F45YX697**
Property	**:**	**25 York House, North Drive, Hatfield Herts AL9 5EG**
Applicant/Claimant	**:**	**RG Securities (No.2) Limited**
Representative	**:**	**Mr Wragg of Counsel instructed by PDC Law and Ms Z Garside of Warwick Estates**
Respondent/Defendant	**:**	**Ms Ngozichukwu Nwannediuto Ugoji**
Representative	**:**	**In person**
Tribunal member	**:**	**Judge Dutton**
In the county court	**:**	**Judge Dutton**
Date of decision	**:**	**10th August 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-

face hearing was not held because the respondent was in Nigeria and it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 196 pages, the contents of which I have noted. The order made is described at the end of these reasons.

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 sums are payable by the Ms Ugoji to the applicant by 11th September 2020:

(i) **Service charges as claimed in the court proceedings: £453.04;**

(ii) **For the period in Ms Ugoji's application to the tribunal, that is to say for the second period in 2019 the sum of £1,151.37**

(iii) **Administration charges totalling £666.00**

Summary of the decisions made by the Court

I find that there is no liability on the part of the respondent Ms Ugoji to pay the sum of £840 claimed as costs in the particulars of claim and I dismiss the applicant's claim for costs in the proceedings for which a summary assessment was sought.

BACKGROUND

1. On 1st October 2019 the County Court at Watford in Claim Number F45YX697 transferred the proceedings between the Applicant and Respondent to this Tribunal. The matter was transferred to the Tribunal to resolve *"all matters falling within the jurisdiction of the Tribunal.*" In addition it noted that the Tribunal Judge would sit as a County Court Judge extending the jurisdiction in accordance with the County Court Act 1984 as amended by the Crime and Courts Act 2013 to enable this Tribunal to determine any aspects of the claim outside the Tribunal's jurisdiction. This order was made by the Court without the input of either party but there was no objection to same.

2. In response to the proceedings the Respondent Miss Ugoji brought proceedings at the First-tier tribunal under section 27A of the Landlord and Tenant Act 1985 (the Act) seeking to challenge the service charges, including reserve fund demands for the maintenance period July to December 2019. The basis of her claim was the 700% increase in the reserve fund component for the first half year January to June 2019 in the sum of £1,294.13 should not be payable and should not continue for the period and July to December 2019 being the amount demanded of £1,317.05.

3. Initially directions were issued on 3rd December 2019 but following the issue of her application further directions were issued by the Tribunal on 30th January 2020. which consolidated Miss Ugoji's claim under reference CAM/26UL/LIS/2020/0004 with those proceedings which had been referred to us from the County Court. The directions were complied with and the matter was originally due to come before the Tribunal on 17th March 2020. However, due to the unavailability of Miss Ugoji the case was adjourned until 20th July 2020 when because of the pandemic and Ms Ugoji's continued stay in Nigeria, it was dealt with by way of a video conferencing hearing.

4. Bundles had been prepared for the original hearing in March and I had those available for the final hearing on 20th July 2020. These included the Court documentation and a defence and counter claim which I will refer to in due course. The order from the Court transferring the papers to this Tribunal was included as was the budget for 2018 with the year-end accounts and the 2019 budget in both cases with demands and statements of account.

5. As to the statements of case, the Respondent had filed a statement of defence in the County Court with a number of exhibits which included a counter claim alleging damages due for the erection of scaffolding by her apartment which had been in situ she said for too long and damage caused to her washing machine and refrigerator, which had rendered them defunct. The Applicants denied any responsibility in respect of the counter claim and that is set out in their defence, which is also within the papers.

6. Another document of interest is a quotation from Xylem Water Solutions UK Limited concerning the replacement of three pumps and a control panel which had failed. The quotation is dated 12th September 2018 and is in the sum of £14,773.51 inclusive of VAT. There are 37 flats in the development which therefore gives a responsibility for each leaseholder of £399, being, as I understood it, a development cost rather than a block cost. Miss Ugoji's position is that this sum of money should not be recovered from the lessees and I will return to that in due course.

7. In addition to the documents that I have mentioned, there was a further Respondent's statement with a reply from the Applicants, a witness statement from Zoe Garside of the present managing agents

Warwick Estates and some correspondence passing between the parties.

8. The bundle also included the application to this tribunal made by Miss Ugoji and the directions, the budget figure for 2019 and a response to the witness statement of Miss Garside with a brief reply.

9. Following from the original bundle I was provided with a summary of costs that the Applicant sought to recover in these proceedings as well as I am told a statement explaining why the Applicant is a party and not the original managing company Great North Management Limited, which I understand is no longer in existence.

10. I have considered these documents in reaching the decision in this case.

11. The Applicant was represented by Mr Wragg of Counsel and accompanied by Miss Garside. In addition Mr Windle, a resident at the development, observed the hearing and was intended to give evidence but unfortunately had not filed a witness statement and I considered it inappropriate that he should be allowed to give any evidence in those circumstances. He was however there if needed to provide some support for Miss Ugoji.

HEARING

12. At the start of the hearing it was possible to clarify some issues. Miss Ugoji told me that the items that she disputed were there reserve fund payments for 2019 which were a total of £2,634.12 up from £349.76 from the year ending December 2018. She thought this was an unreasonable increase. In additional also, she challenged the Applicant's claim for administration charges and legal costs as she considered that she had been paying contributions to the service charges throughout and that it was therefore wrong for the Applicant to have started proceedings to recover these sums of money. The particulars of claim dated 29th March 2019 sought the sum of £2,548.17 in respect of reserve fund and service charge demands a sum of £666 in respect of administration fees and £840 in respect of contractual costs to the time of the proceedings and continuing contractual costs thereafter. These continuing costs were set out on a summary of costs intended for summary assessment and totalled £2,143.00 plus VAT for solicitor's costs and £1,000 plus VAT for Mr Wragg's fees. With the hearing fee of £200 this gave a total liability it is said for Miss Ugoji of £4,011.60.

13. At the start of the hearing Mr Wragg told me that the demands in respect of the service charge for the reserve fund were reduced to £1,294.13, I presume for both half years. This change is consistent with a statement of sums claimed annexed to the particulars which shows the amount claimed for the reserve fund for January to June 2019 of £1,294.13 as opposed to a figure shown on a demand dated 11th December 2018 where this sum is recorded as £1,317.05.

14. In addition to the above, Mr Wragg confirmed that since proceedings had commenced some £1,550 had been paid against the liability and that accordingly the sum claimed now stood at £998.17 in respect of service charges and administration and costs of £1,791 plus of course the costs that I was asked to assess.

15. There is no dispute on the part of Miss Ugoji that the estimated service charges for January to June of £801.37 are due and owing and she does not dispute the claim for the same amount for the second half of 2019 in the action that she commenced in the Tribunal.

16. I therefore have two issues to determine. The first is whether or not the reserve fund demand of £1,294.13 for each half year is reasonable and payable. The second is whether or not the administration charges and costs sought by the Applicant are payable by the Respondent.

17. Some confusion is caused by the works to the pumps, which I referred to above and as set out in the Xylem quotation of £14,773.51. I was told at the hearing that this money would come from the reserve funds that had been demanded. Miss Garside told me that section 20 consultation had been complied with, although Miss Ugoji was somewhat vague in her response thereto indicating that she did not think there had been full section 20 consultation. However, this is not an issue she raised in her defence or indeed in any other statement that is before me.

18. Her concern in regard to the payability of the pump costs is set out in her defence to the County Court proceedings where she says that the irreparable damage to the water pumps is the Applicant Company's responsibility. This because she said it was dealing with the maintenance of the estate and it was her view that they had been negligent in not providing some form of 'cut off' and failing to inform the supply company of this responsibility. Accordingly, the Applicant should not insist on the leaseholders bearing the cost of the replacement pumps in their entirety. This she thought was part of the reason for the sudden increase in the costs of the reserve fund. As I have indicated above, Miss Garside said that the reserve fund monies would be used to meet the costs of the pump quotation which worked out at £399 per lessee there being 37 flats in the development housed in two blocks.

19. Miss Garside's response to Miss Ugoji's comments concerning the costs of the replacement pumps was confirmatory that the section 20 notices had been complied with and she had seen them. The pumps required replacement and it appears that the managing agents were not informed of the water company's intention to turn off the water. It was this disconnection of the water supply to Ms Ugoji's flat that Ms Ugoji said had damaged her washing machine. Ms Garside said she had been pursuing Affinity Water on this point but to date there had been no success in that regard.

20. Miss Garside then went on to indicate her views on the needs for the reserve fund which she thought should stand at somewhere around £100,000. She said she had reduced the payments in 2020 to reflect the fact that monies were in the reserve fund. She told me initially at the hearing that there was £99,086 in the reserve but after reconciliation which she was not able to expand upon, this was now down at around £29,000. It seems this may be as a result of the final accounts for 2019 being reconciled but those were not available to me and I can make no further comment.

21. Miss Ugoji's theme throughout the proceedings was that she believed she was being unnecessarily picked on and that she did not know that RMG had been removed as managing agents and replaced with Warwick. She also considered that the reserve fund should have been spread across the years and not made in one demand. She told me that she had been paying regularly by standing orders, at least since 2015 but this she felt had not been reflected in the Applicant's stance and further that they had not taken into account correspondence that she had sent offering to increase the payments and to make regular lump sum contributions.

22. In respect of the reserve fund demand it is the Applicant's case that this is based upon a survey which was conducted by Trevaskis Consulting in October of 2018. This report was in the bundle and follows an inspection of both Kings Place and York House on 11th October 2018. It confirms that Kings Place is a five storey block of 24 flats and York House a five storey block of 13 flats. Annexed to the report is a ten year programme summarising major works required to enable capital to be gathered to meet items of expenditure. The report does say that the budget costings are indicative estimates and are a guideline to facilitate financial planning. The report then goes on to consider the properties including the main roof, main walls, rain water soil and vent goods, windows and doors, mastic sealants, internal communal areas, the services including the lift, door entry system and the external environs.

23. I have considered the report and have noted that in respect of the main rooves these will only require periodic sundry repairs and the guttering periodical inspections. The exterior brickwork appears to satisfactory as is the rainwater soil and vent goods. The windows and doors are UPVC construction and are likely to have a lifespan in excess of the ten year programme. The internal communal areas will require periodic decorating and carpets will require to be cleaned but are said at the moment to be lightly marked and stained. The electrical system appears to be satisfactory, as is the hot and cold water installations, the more so as it appears each flat has its own boiler.

24. Both blocks have internal lifts and it is assumed that the equipment will require upgrading in ten years' time and this has been included in within the programme. The same is said of the door entry system and the CCTV system although there is no indication that there is, at the moment, any major item of expenditure required for the latter two.

25. It would seem that the doors to the common areas may not meet the necessary fire standards and upgrading has been included within the programme. Externally it is indicated that the area is generally in a satisfactory condition with minor repairs needed.

26. The capital expenditure programme sets out items that the surveyors consider need to be looked at in respect of future years and I have noted those.

27. In respect of the costs it is Miss Ugoji's case that she has been paying regularly at the rate of £124.60 per month from at least December of 2015. This sum, however, has not increased. A payment of £800 was made in November of 2018 and further payment of the same amount on 1st April 2019. In addition, the monthly standing order was increased with effect from 1st April 2019 to £250.

28. I was referred to some correspondence that passed between RMG and Miss Ugoji. The first is a letter from RMG of 4th February 2019 which highlights that the liability was then standing at £2,736.77. It sets out ways by which this liability can be discharged and warns Miss Ugoji that additional charges could flow. On the 13th March Miss Ugoji wrote to a Polly Dyer of RMG following the debt collection letter that she had received. She asked that any debt collection arrangements were stopped and that the legal and administration charges should discontinue. She confirmed in this email that she had been paying a standing order of £124.60 per month for a long time and that this instalment payment was accepted. She told Miss Dyer that she had made further payment of £800 in November and her plan was to pay another £800 at the end of the first quarter of this month and to increase monthly payments to £250 per month in order to ensure that the payments were in her words "harmonised." The email also went on to say that there would be a further payment of £800 in June, September and December of 2019 and that the standing orders of £250 would continue as it was her practice, agreed it would seem with the managing agents, for her to make monthly payments. Evidence of such agreement appears to be set out in the statement of account which shows 'deferred payment fees' at the end of December 2016, 17 and 18. Her submission was that it was the increase in the two half-yearly reserve fund payments and the costs and the fees that the Applicant was seeking to recover that had put her into debt and that her proposals to resolve the issue, subject of course to her dispute of the reserve fund payments, would avoid difficulties.

29. Mr Wragg for the Applicants pointed out that 12 payments of £124.60 gave a figure which was insufficient to cover the annual service charges. He pointed out also that the statement of her account appeared to indicate that she was perpetually in arrears. In response Miss Ugoji said that nobody from RMG had contacted her to say the payments were too little and needed to be increased and indeed she had made the offer to settle as recited above in March but had not had a response

other than Court proceedings. It was put to her by Mr Wragg that it was her responsibility to adjust the monthly payments and it was not the obligation of the Claimant to advice Miss Ugoji that her regular payments were not meeting the undisputed service charge liability. Mr Wragg pointed out that at December 2017 Miss Ugoji was in arrears to the sum of £1,135.71 and the reserve fund and half-yearly payments during 2018 were not in dispute and it was only after making the £800 payment in November of 2018 that the liability came down to under a £1,000 at the end of the 2018 year.

30. It was put to her that the letter before action sent by Property Debt Collection Limited on 21st February had not elicited a response. Miss Ugoji said that she had made a telephone call but there was no record of this and there had been no written response to PDC. It was, however, this letter that prompted her to write to the managing agents in March telling them what she proposed to do in respect of future payments. This letter was sent on 13th March but there appears to be no response. Instead proceedings were commenced on 29th March 2019. It should be noted that Miss Dyer had responded to Miss Ugoji on 18th March saying as follows*: "Morning, I've received this and will respond by Friday this week."* There is no evidence that in fact that was done.

31. Miss Ugoji confirmed that her claim in the Tribunal raised the same points as those covered in response to the Applicant's claim. That was that the reserve fund demand was excessive and should have been stepped. In her view it was unreasonable and that the freeholder was treating the residents unfairly having no interest in their enjoyment of the property. She said that she had only discovered that Warwick had taken over from RMG at the end of 2019. She considered it was unreasonable to increase the reserve fund by some 700% and that an enquiry should have been raised of the lessees beforehand. She also reiterated that she considered the pump liability was not that of the lessees.

32. She then moved on to her counter claim which comprised a refund of monies she had expended in buying a replacement washing machine and refrigerator and a claim, it seems for nuisance, caused by the inconvenience of scaffolding being in place for some eight months.

33. In respect of the washing machine, she said this had been in use when the water was turned off by Affinity and that it had burnt out. I am not clear as to whether the residents were informed that the water supply was to be discontinued but it does seem clear that the managing agents were not. Insofar as the refrigerator, it is suggested that the problems were caused by a poor electrical supply but I have no information as to what that might be or what caused such poor electrical supply. What I do know from Miss Ugoji is that both the washing machine and the refrigerator were at least ten years old.

34. I turn then to the evidence of the scaffolding. This was apparently put in place to investigate leaks from the roof. It was in place for some eight months as this is, I understand, a period over which investigations were undertaken. Miss Ugoji said that this caused great inconvenience. It apparently facilitated vermin getting into her property and youngsters had used it to make life unpleasant for residents and, in particular for her. She said she had made complaints by telephone but there was nothing in writing. Her view was that it was highly inconvenient to have the scaffolding in place for this length of time. She had no idea as to the basis upon which a claim for nuisance could be brought other than it was inconvenient and left the decision to me as to what level of damage if any might be applied. She also indicated that she would be making a claim for costs. She felt that she had been singled out and was the only one taking to Court. She considered that she had been victimised notwithstanding that she was making payments and had made payments of additional sums.

35. Miss Garside who had provided a witness statement which has been noted, told us that the credit team of Warwick would not send emails and would not act proactively. It is likely, however, that a letter would be sent if there were arrears. Asked why the reserve fund demand was lower for the following year, she said this was because there were monies in the account. She felt that the demand for the reserve funds made in 2019 was not based solely on the report but was because monies were needed as this was a complicated development and the reserve was too low from previous years.

36. In submissions Mr Wragg confirmed that although the original liability was £4,339.17, £1,550 had been paid leaving a liability for service charges of £998.17 and the administration charge of £1,791. He referred to the statement of account which indicated in his view that a claim was necessary as Miss Ugoji had been in arrears throughout the period that was shown on the statement of account. It was also submitted that although a payment of £800 had been made in October of 2018 it was not open to Miss Ugoji to choose how and when she paid. He was not sure that any arrangement had been entered into with RMG but even if there was, she was substantially in arrears with her contribution. By the time that Miss Ugoji emailed the Applicant she was already substantially in debt with the collection agency. This was the letter dated 4th February 2019 from RMG which confirms that at that time there was a liability of some £2,736.77. This was followed up by the letter before action sent by PDC on 21st February 2019. The arrangements that Miss Ugoji had put forward to clear the arrears were not in his view sufficient. Although £800 had been paid on account in November, there was no extra payment until after proceedings had been commenced and at that time the instalments were increased.

37. Insofar as the reserve fund monies are concerned, this related to capital expenditure and the report was not disputed by Miss Ugoji. The Applicant's position was there had been no major work since the development had been built and that works would be required and it

would be negligent not to have a reserve fund in place. It was also confirmed that the reserve fund payment should be £1,294.13 per half year and that this included the costs of the pump replacement.

38. In respect of the counter claim, the attempt to offset the various administration charges and costs were not relevant. Insofar as the pump was concerned, it was said that had possibly been in situ since the estate was built. There was no evidence adduced of any failure to maintain and it was confirmed that whilst the residents were told the water was to be disconnected, the managing agent was not. There was, Mr Wragg said, no cause of action to dispute the pump payments and there was no evidence adduced at the hearing to show a proper claim for damages in respect of the various items that Miss Ugoji included in her counter claim. On the question of scaffolding, Mr Wragg drew my attention to the defence to counter claim which was dated 19th June 2019 which at paragraph 5 says as follows*: "Paragraph 2 of the counter claim is denied save for the contractor has left the scaffolding until the Claimant has confirmation that the leak has stopped. There is an issue on the top floor of the site and it is proving difficult to fix. The defendant is put to strict proof that her window is being blocked*. In that regard there is a photograph of the scaffolding, said to be by Miss Ugoji, which would indicate that the window is not in fact blocked but nonetheless there is scaffolding clearly in evidence. It is said, however, that having the scaffolding in place was a sensible thing to do until the problem was resolved.

39. There was no evidence Mr Wragg said that the washing machine had been damaged beyond repair and no evidence or negligence concerning the damage to the refrigerator. Equally there was no evidence as suggested by Miss Ugoji that she was being victimised. She was constantly in arrears and accordingly it was reasonable for the proceedings to be brought.

40. Brief reference was made to the additional claim for contractual costs as set out on the summary statement of costs for assessment. Mr Wragg confirmed that these were divided into six minute units and this should be dealt with on an indemnity cost basis pursuant to Rule 44.5 of the CPR. Miss Ugoji's response was that she should not pay any costs, that there had been no attempt at mediation and that instead RGM were determined to go to Court.

41. Miss Ugoji's final submission was that on the question of pumps there were no cut-outs which was obviously an oversight. Furthermore, no insurance had been undertaken by the managing agents to cover the cost of this and accordingly the liability should rest with the freeholder. She complained again about the removal of RMG as the managing agent which she felt had been carried out in secrecy, although she was happier with Warwick. She said that she had sent the letter in February to RMG because she had heard rumours that they were leaving and she was concerned that they had not picked up that she was paying money on a regular basis and was proposing to increase those payments.

42. On the question of scaffolding, she thought that they could have used sectional scaffolding and that it was wrong to leave it in place for so long. This was, she said, evidence of lack of maintenance. Her view on the reserve fund that it was too high for one year and whilst she disputed that the tenants should be required to pay anything towards the pumps, she did agree that a reserve fund payment as demanded in 2020 would have been the appropriate figure for 2019. She considered that the costs sought were not payable and, in any event disproportionate.

FINDINGS

43. Miss Ugoji has confirmed that I should confine my findings to the question of the reserve fund and the various items of costs that are claimed by the Applicant, RG Securities No 2 Limited.

44. The first question therefore is the reasonableness of the reserve fund payments. I appreciate that the amounts now sought to be recovered have reduced as a result of the payments already made by Miss Ugoji. However, I do not accept those payments as evidencing her acceptance of the reserve fund monies that were claimed. The reserve fund claimed is now £1,294.13 per half year giving a total of £2,588.26. This has reduced form the £1,317.05 for reasons which are unclear to me. This should be contrasted with the reserve fund payments sought in 2018 which totalled £349.76.

45. I do not accept Miss Ugoji's view that the costs of the pump should have been paid for by the Applicant. As I understand it from the evidence given, these pumps have been in situ since the development was first built and there is no indication to show that any neglect on the part of the managing agent or the Applicant caused the pumps to malfunction. The Applicant is entitled to recover the costs of these works through the service charge and I am satisfied that section 20 procedures were followed based on the evidence given to me by Miss Garside at the hearing and the lack of challenge in the papers from Ms Ugoji. In those circumstances, the share that Miss Ugoji would have to pay is £399. That sum I find is due and owing by her.

46. The question then to consider is what would be a reasonable contribution towards the reserve fund for 2019? I have carefully considered the survey report by Trevaskis Consulting and have noted the appendix setting out the sums to be collected. These do seem to me to be on the excessive side. The survey report appears to indicate that in the main the development is in reasonable order and that large items of expenditure are not anticipated. There will be some costs to be incurred in the near future relating to the fire doors to the common parts and it may well be that some decorating costs are necessary. I do not consider, however, that it was necessary to create a 700% increase in the reserve fund payments for 2019 lifting them from just under

£350 to over £2,600 certainly without a better explanation than was provided in the copy letter I saw from RMG dated 11th December 2018.

47. I find therefore that Miss Ugoji should pay her contribution towards the pump costs of £399 for the reasons I have set out above. In addition, I would propose to reduce the reserve fund contributions for this year to £350 per half year. This would give £700 per year per tenant, which over 10 years would give over £200,000 into the reserve fund, which would appear to tie in with the total set out in the schedule.

48. Accordingly, for the period that is in dispute from the County Court I have taken into account the sums set out on the statement of sums claimed annexed to the particulars of claim. This is at page 26 of the bundle. The reserve fund figure shown is £1,294.13. That should be reduced to £749 being £350 for the reserved fund and £399 for the contribution towards the pump costs. The figure of £801.37 for the service charge estimated to June 2019 is not disputed nor is the service charge for the period to 31st December 2019 of £452.67. This gives a total liability therefore on my mathematics of £2,003.04. However, it is accepted that Miss Ugoji has paid £1,550 off this amount which therefore reduces the liability in respect of service charges for the year which is the subject of the Court proceedings to £453.04. The question of costs is something that I will return to in a moment.

49. Considering Miss Ugoji's claim in respect of the second half of the 2019 service charge year, she does not, it seems, seek to object to the estimated costs, which are £801.37 and is therefore due and owing. A further £350 in connection with the reserved fund payments for 2019 is reasonable and payable. This gives a total of £1,151.37. There is I am told no dispute in respect of the costs for 2020.

50. I must then address the counterclaim. I am afraid that Ms Ugoji has not persuaded me that the damage caused to her washing machine and refrigerator were as a result of anything the applicant did or failed to do. I have no evidence to show that the washing machine was damaged as a result of the lack of water and I have no idea why the electrical supply was such that it in turn damaged the fridge. I must therefore dismiss this element of the counterclaim.

51. On the question of the scaffolding I can understand that having this in situ for some 8 months would be an inconvenience. However, it was explained to me that there was an ongoing problem with a leaking roof and that the scaffolding needed to remain in position to enable checking to be undertaken. On the balance I accept the applicant's reasons for maintaining the scaffolding in position as it did and accordingly, I do not consider that Ms Ugoji is entitled to any damages.

52. I turn then to the question of costs. It is fair to say that Miss Ugoji has not helped herself in this regard. It is quite clear from the statement of account that there have been arrears over a period of time although they do fluctuate. I bear in mind that in March 2019, before

proceedings commenced, Miss Ugoji had informed the Applicant's managing agents RGM that she proposed to increase the monthly instalments and had already by that time made a one off payment of £800. She said that she would make a further payment at the beginning of the next quarter and indeed £800 was paid on 1st April and further instalments in April and May of £250 each.

53. I consider that there is an obligation of the managing agents to inform the lessee that the standing orders are not keeping pace with the service charge demands. To an extent they did so. I do also consider that Miss Ugoji should have been aware that the standing orders were not keeping pace. On the question of the standing orders I am satisfied that the managing agents had agreed this form of payment as evidenced by the deferred payment charge levied. In so doing I do consider, as I have said above, that they have a responsibility to notify the lessee, in this case Ms Ugoji, that she was falling behind, but I find that the primary obligation rests with Ms Ugoji.

54. The failure of RMG to respond to Miss Ugoji following her letter of 13th March when she put forward proposals to resolve the matter is wholly unsatisfactory. Indeed, instead of responding proceedings were started. This letter/email appears to have been ignored. It seems to me that these proceedings could have been avoided by engaging with Miss Ugoji to ensure that the payments that in fact she did make in April were to be made and also to ensure that they continued at a level which would enable the service charge to be kept under control. Neither side it seems to me is therefore without fault.

55. Ms Ugoji has had success in respect of the reserve fund payments. The liability that I have found she is due to pay in respect of the proceedings is £453.04, after taking into account the payments she made after the Court action was commenced. I find that the applicant should have responded to the email sent by Ms Ugoji in March, rather than just indicating a response would follow that week. In fact, the response was as I have said, Court action. The lease has a widely drawn clause 3(18) which provides for the lessee to "*pay the lessors proper legal costs and surveyors fee incurred by it in connection with any acts of things properly required or requested to be done by it*".

56. My findings on the question of costs and administration charges is as follows. The initial client administration charge of £160, as explained at paragraph 25i of Ms Garside's witness statement is payable. There were arrears on the account and it was reasonable to instruct DCA. There appears to be no argument over the £30 deferred payment fee and that seems reasonable, given the extra administration required to monitor the payments. That in turn, in my finding further justifies the responsibility on the applicant's managing agents to keep the account under review. The reminder fee of £34 is reasonable as an administration charge under the provisions of schedule 11 to the Commonhold and Leasehold Reform Acct 2002. Indeed, it seems this letter prompted Ms Ugoji to contact RGM. I would also allow the PDC

instruction fee of £442. This is explained at paragraph 26 of Miss Garside's witness statement and I accept that explanation.

57. However, I do not consider that further costs as set out in the particulars of claim of £840 nor the claim for costs which I was asked to consider as a summary assessment are recoverable. As I have stated above, I find the response, or rather lack of it by RMG to Ms Ugoji's email dated 13th March 2019 and her subsequent chasing email dated 18th March 2019 to be unacceptable. If they had responded appropriately the proceedings would not have been necessary and a suitable payment plan agreed. A plan which Ms Ugoji put forward and followed. I accept Ms Ugoji's evidence that she telephoned the solicitors to discuss without success. I bear in mind the terms of her defence where she set out the payment history and the payment of £800 she made in November 2018. She is not a lady who pays nothing and her proposals in March 2019, before proceedings commenced should have been acted upon by the applicant and or its managing agents.

58. Therefore, find that Ms Ugoji is liable to pay the administration fee of £160; the deferred payment charge of £30; the administration fee of £34 and finally the fixed fee of DCA of £442.00. This gives total liability in respect of costs and administration charges of £666.00. I find that she has no liability in respect of the fixed legal costs of £840, nor the costs I was asked to assess at the hearing.

59. Going forward it is important that Miss Ugoji does pay attention to the statements of account to ensure that her payments do keep abreast of the service charge costs. A certain relaxation has been given to her to enable her to make payments on account but it is my view that she should ensure that those payments on account keep her in credit so that she is not in arrears.

Andrew Dutton

Judge: A A Dutton

Date: 10th August 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.