



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

Case reference	:	CAM/00MA/LSC/2019/0039
Property	:	Flats 10 and 11 Avon Court, Cressex Close, Binfield, Bracknell, Berkshire RG42 4DR
Applicants	:	Mr Anthony Harris (flat 10) and Mr Kim Rhodes (flat 11)
Representative	:	In person
Respondent	:	Avon Court (Binfield) Residents Association Limited
Representative	:	Mr Blakeney – Counsel instructed by Longmores solicitors
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	Tribunal Judge Dutton Mrs E Flint FRICS Mr O N Miller BSc
Venue	:	Holiday Inn, Maidenhead on 13th February 2020
Date of decision	:	17th February 2020

DECISION

Decisions of the tribunal

- (1) For the reasons set out below the Tribunal orders that this application be transferred to the County Court at Reading to be considered with the cases presently at that Court involving both applicants under claim numbers F30LV180 for Mr Harris being a matter transferred from the County Court at Liverpool and claim F94YX829 for Mr Rhodes.

The application

1. The Applicants applied to the tribunal on 7th June 2019 seeking a determination in respect of a number of years in dispute and in the case of Mr Rhodes seeking confirmation that the decisions made in 2014 in a claim by Mr Harris could be extended to him. He also, it seems, wished to revisit service charge years back to 2003.
2. This matter was listed for a two day hearing commencing on 13th February 2020. In preparation for the hearing we were provided with bundles running to some 833 pages, admittedly containing a good deal of duplication and repetition. On 28th January 2020 the applicants wrote to the tribunal stating "*The joint applicants hereby withdraw their application(s) to the Tribunal in full with immediate effect*". On 4th February solicitors for the respondent wrote to the tribunal objecting to the withdrawal. The tribunal considered these representations and decided that the hearing would proceed for the reasons clearly stated in a letter dated 6th February 2020.
3. At the commencement of the hearing the first matter raised by Mr Blakeney was that a witness, Mr Dowle, was only able to stay until 11.00am and would not be available the following day. Mr Harris objected, it seems on the grounds that he wished Mr Dowle to remain throughout the hearing to be available for further questioning by Mr Harris at any time. We decided that we would allow Mr Blakeney to produce Mr Dowle as a witness and his evidence in chief was limited to the statement we had in the bundle. Mr Harris asked him questions, which in the main were not pertinent to the issues we had to consider.
4. What we did discover was that Mr Dowle had owned five flats but now only three. That he had been a member of the management committee, consisting of himself, Mr Wharphshire and Mrs Irwing for a number of years but had not attended a committee meeting, it seems since 2015 and really had no involvement in the running of the estate.
5. After having heard from Mr Dowle, Mr Harris explained the applicants' reasons for withdrawing. It seems they had been receiving advice directly from Counsel but that the barrister involved was unable to attend the hearing.

6. He told us that there were presently two Court cases running against himself and Mr Rhodes. The claim against him was issued in the County Court at Liverpool on 1st March 2019, some three months before the application was made to the tribunal and had been transferred to Reading. It appears that the claim is numbered F30LV180 and had been transferred on 17th June 2019. Proceedings against Mr Rhodes it seems had been issued in Reading under claim F94YX829 in the sum of £4,876.62 plus administration charges and costs on 23rd August 2019, nearly some two months after the application to the tribunal.
7. To make matters more complicated it was known that there is a default judgment against Mr Rhodes in the sum of £4,000.54 in claim B68YJ129. It appears that the period covered by this judgment may be 2013 to 2015. What, however, was not known was that there appear to be two judgments against Mr Harris, one dated 27th November 2015 in claim B4CW6P8Q in the sum of £2,212.39 and the other dated 10th January 2017 in claim C7CW54M1 in the sum of £1,988.35. In both cases we were not in possession of any documents which explained the background of these judgments and how they impacted on the issues before us.
8. The complication did not stop there for Mr Harris explained to us that his primary case was that the respondents were not entitled to recover the service charges claimed because he considered that the respondent had not followed Company legislation in making decisions to employ contractors and incur costs, which he was being asked to pay. It appears that the actual dispute as to the reasonableness and payability of service charges under the provisions of section 19 and 27A of the Landlord and Tenant Act 1985 (the Act) may be a secondary consideration.
9. It was made clear to Mr Harris, who spoke for both himself and Mr Rhodes, that we did not have jurisdiction to determine issues relating to Company Law. There are also other allegations made which we would not be able to address.

Findings

10. We are deeply disappointed that it was not made clear to the tribunal that there were the complications set out above. It amazes us that the respondent did not notify the tribunal that at the time of the application that proceedings had already been started in Court against Mr Rhodes. Further, why were proceedings started against Mr Harris when the tribunal application had been in place for nearly two months? It seems that the respondent instructed three sets of solicitors to deal with these three sets of proceedings. This may have led to confusion, but it was of the respondent's own making. The applicants are not without blame for in the repetitive, lengthy and somewhat confusing statements of case there does not appear to be any clear reference to these other court cases.

11. Having heard from the parties and considering the following matters:
 - (a) The claim against Mr Rhodes was started before the application to this tribunal and on the face of it the Court is seized of the jurisdiction. Although the details of the claim are not known it appears to deal with some years that are before us.
 - (b) There are judgments against Mr Harris, the details of which were unclear. Although it would seem Mr Blakeney had made contact with one set of solicitors no documentation was available to us to clarify the position. This may impact on our jurisdiction to determine certain years.
 - (c) Notwithstanding the application to the tribunal the respondent commenced proceedings against Mr Harris, it would seem involving the years in question, but again no clear indication could be gleaned from what papers we could see.
 - (d) Perhaps most importantly, Mr Harris clarified the primary attack on the service charges was failure/breach of what he considered to be Company Law issues. This is not within our jurisdiction.

We consider that this application is best served by being transferred to the County Court at Reading to join with the cases presently there. We would not presume to indicate what directions the Court may wish to issue although we have set out below some directions for disclosure. We do assume that if the arguments raised by Mr Harris as to the Company Law issues are not supported by the Court that the determination of the service charges under the provisions of s19 and s27A of the Act will be transferred back to this tribunal.

12. The transfer is made under the provisions of rule 6 (3)(n) both (i) and (ii) given the late disclosure of the matters listed at 11 above.
13. The parties are to disclose full details of the Court judgements we have referred to above clearly setting out the years that are covered by same by 20th February 2020.
14. As to disclosure we were told that the respondent's managing agents have much of the accounting information on computer which can be emailed to Mr Harris. Notwithstanding his apparent disinclination to accept service of papers by email he confirmed that these accounting documents could be sent to him. These papers should include all invoices available, copies of any contracts with companies/individuals providing services to the respondent in the period in dispute, details of the insurance policies effected both for the estate and for the directors including the policy and schedules, copies of any agency arrangements with the freeholder/landlord. This is to be attended by 13th March 2020.

15. At the end of the hearing Mr Blakeney asked that we consider the Respondent's claim for costs under the provisions of Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. We declined to do so. Although details of the Respondent's legal costs were set out on a schedule in the bundle there was no supporting statement nor further information that might be required to determine the costs. In addition, and most importantly the Applicants had not had the proper opportunity of considering the claim and responding. We considered it was somewhat premature. The intention to make a claim is noted. Clearly costs will be an issue, especially upon return to the Court. Once the Court has dealt with the outstanding matters the proceedings could be returned to this tribunal if it is felt that a claim for costs under the Rules should be made. Directions can then be issued.
16. Finally, we remind the parties of their obligations to the tribunal and to the Court to observe the overriding objectives and to co-operate with the tribunal and with the Court. We are bound to say that this obligation has not been fully complied with by either side.

Tribunal Judge Dutton

17th February 2020

ANNEX – RIGHTS OF APPEAL

1. 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 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 Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to 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 identify the decision of the Tribunal to which it relates (ie 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.