



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

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

Tribunal reference : **LON/00AZ/LSC/2020/0165**

Court claim number : **G10YX061**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **Flats 1 & 2, 59 Waldram Park Road, SE23 2PW**

Applicant/Claimant : **Eurocent (London 1) Limited**

Representative : **Freemans Solicitors**

Respondent/Defendant : **Engel Khoffman**

Representative : **In person**

Tribunal members : **Judge Angus Andrew
Andrew Lewicki FRICS**

In the County Court : **Judge Angus Andrew**

Date of decision : **27 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. We were referred to a hearing bundle of 162 pages. A cost schedule was received during the hearing.

Summary of the decisions made by the Tribunal

1. The following sums are payable by the Engel Khoffman to Eurocent (London 1) Limited:
 - (i) Service charges of £3,579.88; and
 - (ii) Administration charges of £96.00; and
 - (iii) The tribunal hearing fee of £200.

Summary of the decisions made by the Court

2. The following sums are payable by Engel Khoffman to Eurocent (London 1) Limited by 26 January 2021:
 - (iv) Contractual interest at 4.75% in respect of the service charges under paragraph 32 of the fourth schedule to the leases calculated from the dates of demand to 29 December 2020: £344.74; and
 - (v) Legal costs under paragraph numbers 8.1 and 27.1 of the fourth schedule to the leases: £2,327.80.

The proceedings

3. Proceedings were originally issued against the respondent on 21 January 2020 in the County Court Money Claims Centre under claim number G10YX061. The respondent filed a Defence dated 16 February 2020. The proceedings were then transferred to the County Court at Bromley and then to this tribunal by the order of Deputy District Judge Mohabir on 1 July 2020.
4. Directions were issued by Judge Martynski on 31 July 2020. Amongst other things Judge Martynski assigned the case to the Small Claims Track and directed that the Judge hearing the case should deal with all the issues in the case at the same time as deciding the payability of the Service and Administration charges and would, where necessary, sit as a judge of the County Court.
5. 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 their 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.
6. In practice, the service and administration charges and the reimbursement of the tribunal fees were determined by Judge Andrew and Mr Lewicki as the tribunal and the contractual costs and interest by Judge Andrew alone, sitting as a County Court judge. These reasons will act as both the reasons for the tribunal decision and the reasoned judgment of the county court, where a separate order has been made.

7. Documents in the hearing bundle are referred to by their PDF page numbers and not their paginated page numbers.

The hearing

8. The matter eventually came to hearing on 30 October 2020. The applicant freeholder, Eurocent (London 1) Limited was represented by Will Beeston, a barrister instructed by Freemans Solicitors. Mr Ganesh Khatri, a solicitor with Freemans, also attended the hearing. Mr Dovi Feld of Peak Estates Limited gave evidence on the applicant's behalf.
9. Although the respondent tenant, Engel Khoffman had filed a defence he did not attend the hearing and was not represented. An email at pages 156 to 160 contained further particulars of his objections to the claimed service and administration charges.

The background

10. Until very recently 59 Waldram Park Road ("the building") comprised a retail unit on the ground floor with flats on the first and second floors. Mr Feld told us that the footprint of the retail unit is only slightly larger than the flats above. Mr Khoffman holds long leases of each of the two flats both of which were granted in 2015. A front door, communal hall and staircase provide access to the two flats.
11. The leases are in substantially the same form. Although we refer to the relevant lease terms below the landlord is responsible for insuring, maintaining and repairing the building and recovers its costs by way of a variable service charge with provision for payment of an interim service charge payable half yearly.
12. The building was previously managed by The Freehold Agent Ltd. On 1 April 2019 Peak Estates Ltd was appointed in its place as managing agent. Mr Feld told us that the retail unit is also held under a similar lease although a copy was not included in the bundle. The retail unit has been empty for the last 18 months or so whilst the lessee converted it into 3 flats that must be smaller than the flats owned by Mr Khoffman. From the email at 156 to 160 it would seem that all five flats now share a communal hall.
13. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

The claim

14. The applicant claimed the following:-

- a. In respect of each flat “*service charges*” of £2,246.22: £4,492.44 in total. From the statements at pages 107 and 116 it became apparent that these charges comprised, in respect of each flat:
 - i. Interim or on account charges of £1,099.11 demanded on 2 July 2019 and 3 October 2019; and
 - ii. A late payment administration charge of £48 demanded on 11 December 2019.
- b. Contractual interest under the terms of the leases at an annual rate of 4.75% that was put at £228.52 and accruing at a daily rate of £0.58 per flat until the date of payment.
- c. Costs.

The relevant lease terms

- 15. By paragraph 31 of the Fourth Schedule the tenant covenants to pay the Interim Charge and the Service Charge in accordance with the Seventh Schedule, which contains the provisions relating to the computation of the Service Charge.
- 16. Paragraph 1.2 of the Seventh Schedule provides in so far as relevant to this decision: “*“The Total Service Cost” means the aggregate amount in each accounting period .. Incurred in connection with any of the matter referred to in the Sixth Schedule*”.
- 17. Paragraph 1.3 provides: “*“The Service Charge” means the Proportion of those matters comprised in the Total Service Cost*”.
- 18. Paragraph 1.4 provides in so far as relevant to this decision: “*“The Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord (or its Managing Agents or Auditors) shall specify to be a fair estimate of the Service Charge that will be payable by the Tenant...*”.
- 19. On the particulars page “*the Proportion*” is defined as “*a fair and reasonable proportion*”.
- 20. By paragraph 32 of the Fourth Schedule the tenant covenants to pay interest at a rate of 4% above Lloyds TSB Bank Plc base rate on any Interim Charge or Service Charge that is more than 7 days overdue.
- 21. By paragraph 8.3 of the fourth schedule the tenant covenants to pay all costs incurred by the landlord in the “*enforcement (whether by proceedings or otherwise) of:The payment of any arrears of Rent Interim Charge or Service Charge or interest payable thereon*”.
- 22. By paragraph 27.2 of the fourth schedule the tenant covenants to indemnify the landlord against any costs incurred “*relating to or arising from any breach non observance or non performance by the Tenant of any of the Tenant’s obligations under this lease*”.

The tribunal issues

23. The issues are encapsulated in the following questions:
- a. Could the tribunal determine service and administration charges accruing and demanded after the issue of the County Court proceedings?
 - b. Was the tribunal limited to the issues raised by Mr Khoffman in his defence?
 - c. Were the 2019 estimated service charge costs reasonable in amount?
 - d. Was the apportionment of the estimated service charge costs between Mr Khoffman's flats and the ground floor retail unit "*fair and reasonable*"?
 - e. Was the administration charge of £48 reasonable in amount?
 - f. Should the tribunal order Mr Khoffman to reimburse the applicant with the tribunal hearing fee of £200?

Tribunal decisions and reasons

Could the tribunal determine service and administration charges accruing and demanded after the issue of the County Court proceedings?

24. At the hearing Mr Beeston sought to persuade the tribunal to determine, in respect of each flat, further administration charges of £180, a balancing service charge for 2019 of £137.71 and interim service charges for 2020 of £941.65. The tribunal declined Mr Beeston's invitation for each of the following reasons.
25. The tribunal's jurisdiction was limited by the extent of the claim transferred to it by the County Court. Without a fresh application (that could have been made at any time) the tribunal could not consider the further charges.
26. Mr Khoffman did not attend the hearing and he was not obliged to do so. It would have been wholly unfair and unjust for the tribunal to consider the further charges in Mr Khoffman's absence and without his consent. Any decision on those further charges would amount to a procedural irregularity giving rise to a justifiable ground of appeal.

Was the tribunal limited to the issues raised by Mr Khoffman in his defence?

27. In his defence Mr Khoffman raised only two issues. The first was that he was denied the right of first refusal when the freehold reversion was sold. The second was that minimal services had been provided by the applicant. Mr Beeston said that Mr Khoffman's email at pages 156 to 160 "*was not before us*" and that, by extension the tribunal was bound

to determine that the claimed service and administration charges were payable.

28. The tribunal rejected that argument. The email had been included in the hearing bundle and we were entitled to have regard to the issues raised in it. In any event, cases such as this were transferred to the tribunal so that expert members could make a determination of a tenant's liability to pay disputed service charges pursuant to the provisions of section 27A of the Landlord and Tenant Act 1985.
29. As an aside it should be said that the freehold reversion had not been sold: there had simply been a change of name evidenced by a Companies House Certificate.

Were the 2019 estimated service charge costs reasonable in amount?

30. Set out below is a table of the 2019 estimated service charge costs and for comparison the actual costs said to have been incurred:

Expenditure	Estimated cost	% applied to each flat	Estimated s/c per flat	Actual cost
Communal cleaning	1,500.00	50%	750.00	520.80
Window cleaning	300.00	50%	150.00	0.00
Health and Safety	500.00	50%	250.00	0.00
Fire risk assessment	300.00	50%	150.00	299.00
Building Insurance	669.80	33.33%	223.24	1,260.29
Communal electricity	250.00	50%	125.00	0.00
General maintenance	600.00	50%	300.00	2,512.00
Management fee	750.00	33.33%	249.98	750.00
Totals	£4,869.80		£2,198.22	£5,342.09

31. By way of clarification, the lessee of the ground floor retail unit was only required to contribute towards the costs of insurance and management.
32. The majority of Mr Khoffman's objections to the demands were made under the apparent misapprehension that he was being charged for costs actually incurred.
33. The issue is whether the estimates were reasonable when the demands were issued and not whether they are reasonable with the benefit of hindsight. An estimate given at the start of the service charge year may

be reasonable even if no costs were actually incurred within the service charge year.

34. In an ideal world the tribunal would have the actual costs incurred in the previous year as a comparison. In this case the tribunal only has the actual costs incurred for the disputed year. Nevertheless, the actual costs taken as a whole indicate that the estimated costs were reasonable in total.
35. With one exception the tribunal is satisfied that the individual estimated costs were also reasonable. Although no costs were ultimately incurred in respect of window cleaning and health and safety it was reasonable to include estimates under those heads.
36. The exception is the estimate of £250 for communal electricity to the hall and stairs serving the two flats. Mr Feld accepted that the electricity is not separately metered and it seems that the supply is run off one of the flat meters as is often the case in properties of this type. Mr Feld, being new to the job, was unaware of that. However the applicant as a responsible landlord should have known that no communal electricity costs would be incurred and an estimate for those costs should not have been included.

Was the apportionment of the estimated service charge costs between Mr Khoffman's flats and the ground floor retail unit "fair and reasonable"?

37. The question first raised a discrete issue: does the lease permit the landlord to apportion the estimated costs on an individual basis? At the hearing the tribunal suggested that the use of the words "*aggregate amount*" in paragraph 1.2 of the Seventh Schedule required the landlord to apportion only the sum of the estimated costs. If that was correct then, using the unit basis of apportionment adopted by the applicant, Mr Khoffman would only have to pay a third of the sum of the estimated costs, in respect of each flat.
38. However on reflection the tribunal determines that the use of the words "*those matters comprised in*" in paragraph 1.3 of the Seventh Schedule permits the apportionment of the estimated costs on an individual basis and it accepts Mr Beeston's submission to that effect.
39. The unit basis of apportionment adopted by the applicant is commonly used in properties of this type. Mr Feld told us that it would be retained going forward and that the lessee of each flat would be in future be required to pay one fifth of the estimated and actual expenditure now that the conversion of the ground floor retail unit had been completed. The tribunal accepts that the unit basis of apportionment is fair and reasonable
40. However the tribunal has more difficulty with the apportionment of a majority of the costs between the two flats alone with nothing being charged to the ground floor retail unit. With the exception of the communal cleaning all the other heads of expenditure either directly or

indirectly benefit the building as a whole and the estimated and actual cost should be shared equally between the three lessees.

41. The only explanation offered by Mr Feld was that during 2019 the ground floor was empty whilst the conversion works were being completed. That however is not a good reason for loading the estimated and actual costs on to the lessees of the two flats. During the conversion works the ground floor still benefited from the expenditure. In any event it was the ground floor lessee's decision to convert the retail unit and it is neither fair nor reasonable to penalise the lessees of the two flats for that decision.
42. Consequently and for each and all of the above reasons we determine that interim service charges of £1,789.94 are payable in respect of each flat in accordance with the following table:

Expenditure	Estimated cost	% applied to each flat	Estimated s/c per flat
Communal cleaning	1,500.00	50%	750.00
Window cleaning	300.00	33.33r%	100.00
Health and Safety	500.00	33.33r%	166.67
Fire risk assessment	300.00	33.33r%	100.00
Building Insurance	669.80	33.33r%	223.27
General maintenance	600.00	33.33r%	200.00
Management fee	750.00	33.33r%	250.00
Totals	£4,619.80		£1,789.94

Was the administration charge of £48 reasonable in amount?

43. Mr Khoffman had not challenged the administration charge. The demanded service charges were in arrears. Mr Khoffman could have paid a reasonable payment on account but chose not to. The late payment administration charge was reasonable and was recoverable under paragraphs 8.3 and 27.2 of the fourth schedule to the leases.

Should the tribunal order Mr Khoffman to reimburse the applicant with the tribunal hearing fee of £200?

44. Mr Khoffman had failed to engage with the tribunal proceedings. As Mr Beeston pointed out Mr Khoffman could have paid the interim charges and challenged the actual costs incurred by making his own application to the tribunal thereby avoiding the County Court proceedings and the possibility of an adverse cost order. To a large extent he brought these

proceedings on himself and having done so, had not engaged with the tribunal. For each of these reasons the tribunal considers it both fair and just that Mr Khoffman should reimburse the applicant with the hearing fee of £200.

County Court issues: interest and costs

45. The interim charges were first demanded on 2 July 2019 and 3 October 2019 and remain outstanding. Interest is payable under paragraph 32 of the fourth schedule to the leases. In the absence of any objection from Mr Khoffman I accept that the correct rate is 4.75%. Interest is payable from 7 days after the date of the demands until 29 December 2020 in the sum of £344.74.
46. At the hearing Mr Beeston confirmed that the applicant was claiming contractual costs under the terms of the leases. Shortly before the hearing a cost schedule was sent to the tribunal and Mr Khoffman although it was only brought to my attention during the hearing. In total the applicant claimed costs of £7,655.40. Following the hearing I issued directions giving Mr Khoffman the opportunity to respond by 17 November 2020 and the applicant the opportunity to reply by 24 November 2020. No response from Mr Khoffman was forthcoming.
47. Mr Beeston relied on the contractual right to recover costs pursuant to paragraphs 8.3 and 27.2 of the fourth schedule to the leases. As indicted Mr Khoffman did not challenge the applicant's entitlement to costs despite being given the opportunity to do so.
48. I am satisfied that the landlord is entitled to an order for the recovery of its costs against Mr Khoffman, as a matter of contractual entitlement. In respect of the County Court proceedings the applicant is entitled to its costs on an indemnity basis under Rule 44 of the Civil Procedure Rules because of the contractual entitlement. In practical terms this means that the court will give the benefit of the doubt to the applicant in terms of whether costs are reasonably incurred or reasonable in amount.
49. Section 51 of the Senior Courts Act and the Civil Procedure Rules do not apply to the tribunal proceedings, which are governed by Section 29(1) of the Tribunals, Courts and Enforcement Act 2007 and the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. In practical terms this means that the tribunal is a non-costs shifting environment in contrast to the County Court.
50. Consequently after the matter was transferred to the tribunal on 20 July 2020 the applicant's costs may only be recovered as a variable administration charge and are subject to the provisions of Section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act

2002 and are only payable to the extent that they are reasonable. The applicant must first issue a demand for those costs in conformity with the Schedule 11, giving Mr Khoffman the right to challenge those costs in the tribunal, should he so choose. Consequently it only falls to me to assess the applicant's costs incurred to 20 July 2020, reminding myself that the assessment is on the indemnity basis.

Assessment of the applicant's costs

51. The applicant's costs total £7,655.40 including the costs incurred in the tribunal proceedings. I must first disinter the costs incurred in the court proceedings. In terms of work done on documents £1,160 is claimed up to and including the transfer to the tribunal. The only other relevant costs relate to correspondence and telephone attendances. Regrettably only the total time rather than the number of letters and attendances is given. A total of £1,640 is claimed for both proceedings. It is reasonable to assume that they were incurred in proportion to the work done on documents. On that basis £588 relates to the court proceedings. Consequently my starting point is as follows:-

	£
Solicitors' costs	£1,748.00
Court fee	£205.00
Land Registry fees	£21.00
VAT on solicitors' and Land Registry fees	£353.80
Grand total	£2,327.80

52. The work was undertaken by a band A and a band D fee earner, with hourly rates of £250 and £150, indicating a blended hourly rate of £200. The hourly rates are reasonable and are consistent with those charged in the market.
53. The claimed costs indicate that some 8 or 9 hours was spent in the completion of the work up to the issue of proceedings and the subsequent transfer to the tribunal. The work included obtaining instructions, the consideration of two leases and the preparation of detailed particulars. The time commitment was entirely reasonable and I allow the costs as claimed.
54. When the tribunal costs have been claimed and assessed Mr Khoffman will have to pay a significant sum but it reflects the fact that his leases entitle the applicant to recover contractual costs incurred in enforcing the payment of any arrears. Mr Khoffman's defence, such as it was, was

largely based on his misunderstanding of the nature of the claimed charges. In future he may wish to consider paying the service charges under protest if he disputes them and then issuing an application for determination by the tribunal.

55. In order to bring the matter to a conclusion I have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Bromley, to be entered in the court's records. All payments are to be made by 26 January 2021.

Name: Judge Andrew

Date: 27 November 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.