



**FIRST-TIER TRIBUNAL PROPERTY
CHAMBER (RESIDENTIAL
PROPERTY) and IN THE COUNTY
COURT AT Clerkenwell &
Shoreditch, sitting at 10 Alfred Place,
London WC1E 7LR**

Case reference : LON/00AU/LSC/2020/0030 & 0139

County court claim number : G05YX158

HMCTS code (paper, video, audio) : P

Property : Flat 3 Dolphin Court, 42 Carleton Road, London N7 0ER

Applicant (Defendant) : Taryn Hill

Respondent (Claimant) : El-Gamal & Co Ltd

Representative : PDC Law
Aldermartin, Baines & Cuthbert

Type of application : Transfer from County Court – Costs

Tribunal members : Judge Nicol
Mr L Jarero BSc FRICS

Date of decision : 26th February 2021

ORDERS AND REASONS ON COSTS

Determination of the Tribunal:

- (1) The Tribunal orders in accordance with paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Applicant's liability to pay an administration charge for litigation costs incurred in these proceedings is extinguished.

Order of the county court:

- (2) The court dismisses the Respondent/Claimant's application for costs.

Reasons

1. The Respondent issued proceedings in the county court claiming £3,086 in service and administration charges for the period from 1st January 2017 to 31st December 2018. This claim was transferred to the Tribunal by order of District Judge Hayes on 6th May 2020 where it was heard together with the Applicant's own application to the Tribunal challenging the reasonableness and payability of these same charges and other service charges for 2019.
2. In accordance with section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 the Tribunal determined that a total of £1,515.57 was payable by the Applicant to the Respondent in respect of service and administration charges, £796.26 being attributable to 2017-18 and £719.31 to 2019. The reasons for this were set out in the combined decision of the court and the Tribunal dated 4th December 2020.
3. In accordance with the court's directions, both parties have filed written submissions on the issue of costs. The Respondent seeks an order from the court for the costs of both their legal representatives, PDC Law, as set out in a Statement of Costs dated 16th October 2020, and of their agents, Aldermartin, Baines & Cuthbert, as set out in an invoice dated 14th January 2021.
4. In her original Tribunal application, the Applicant applied under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish any liability to pay an administration charge in respect of litigation costs and now submits that she should not be liable for any costs (she points to some of her own costs incurred in these proceedings but has not made her own costs application).
5. The Respondent seeks costs pursuant to their contractual entitlement under clause 4(e) of the Applicant's lease (wrongly referred to as 4(c) in their written submissions):

To pay all costs charges and expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.
6. The Court of Appeal confirmed in *Freeholders of 69 Marina, St Leonards-on-Sea v Oram* [2011] EWCA Civ 1258 that this type of clause entitles a landlord to their costs of establishing their entitlement to unpaid service charges.
7. The Respondent relies on the Court of Appeal's decision in *Chaplain Ltd v Kumari* [2015] EWCA Civ 798 which confirmed or established relevant principles:

- (a) An order for the payment of costs of proceedings by one party to another party is always a discretionary order.
 - (b) Where there is a contractual right to costs, the discretion should ordinarily be exercised so as to reflect that contractual right (*Gomba Holdings (UK) Ltd v Minorities Finance Ltd (No.2)* [1993] Ch 171).
 - (c) A successful litigant's contractual rights to recover the costs of any proceedings to enforce their primary contractual rights is a highly relevant factor when it comes to making a costs order. They are not to be deprived of their contractual rights to costs unless there is good reason to do so and that applies both to the making of a costs order in their favour and to the extent that costs are to be paid to them. (*Church Commissioners v Ibrahim* [1997] EGLR 13)
 - (d) The fact that a landlord was unable to recover costs as a service charge did not prevent them from recovering costs under another clause in the lease.
 - (e) The fact that a claim has (or should have) been allocated to the small track does not limit the court in awarding contractual costs.
 - (f) The court will enforce a contractual entitlement to costs subject to its equitable power to disallow unreasonable expenses.
8. Contractual costs are awarded on an indemnity basis but, as well as the point made in sub-paragraph (f) in the preceding paragraph, CPR r.44.3(1) makes it clear that the court will not in any case allow costs which have been unreasonably incurred or are unreasonable in amount.
9. The first point to make is that this case involves mixed court and Tribunal proceedings. The court only has the power to award costs in relation to the court proceedings which involved the charges for 2017 and 2018. However, the Respondent's claim for costs appears to make no distinction between the two and covers both proceedings. At the very least, costs attributable to the Tribunal proceedings cannot be included in any award of costs by the court.
10. While there is no doubt that the Applicant was liable for some of the sums claimed, it is equally clear that the Respondent included in their claim sums which should not have been there, particularly in relation to matters ruled on by the Tribunal in previous cases. The costs incurred in pursuing those sums were unreasonably incurred and it would be inequitable to allow the Respondent to enforce their contractual entitlement to costs so incurred. It is notable that the Respondent recovered only around one-quarter of the amount they originally claimed in the court proceedings.
11. If the decision were entirely that of the court, about half the costs would be excluded because they were not part of the court proceedings and the remaining sum would be reduced by around three-quarters to reflect the sums unreasonably incurred.

12. However, the Tribunal must further consider the matter pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Tribunal notes that the Respondent claimed £6,922.24 for the costs of PDC Law and £8,520 for those of Aldermartin Baines & Cuthbert which seem disproportionate to the amounts in dispute. However, the Tribunal notes what it said in its decision of 4th December 2020:
47. The Applicant applied for an order by the Tribunal under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs of the proceedings may not be regarded as relevant costs in calculating the service charges. This is a separate issue from whether the court should make a costs order.
48. In considering whether to make an order under section 20C, the Tribunal has to bear in mind that it is only relevant in circumstances where the contract freely agreed between the parties, as contained in the lease, provides that the landlord has the right to recover such costs. It is also highly relevant which party has succeeded on the issues in dispute and whether the parties could have made more efforts to avoid resorting to litigation and, therefore, to avoid the resulting costs.
49. In the Tribunal's opinion, these matters result in a finely balanced decision. In particular, both parties can point to some successes on the issues. However, what tips the scales firmly in favour of making an order is the fact that the Respondent ignored a previous Tribunal decision and continued to seek to impose charges to which they knew they were not entitled. Therefore, the Tribunal decided to make a section 20C order.
13. The same reasoning applies with equal force to an order under paragraph 5A. The Tribunal concludes that it would be just and equitable to make an order extinguishing the Applicant's liability to pay an administration charge for litigation costs incurred in these proceedings.
14. In the light of the Tribunal's order, the court dismisses the Respondent's application for costs.

Name: Judge Nicol

Date: 26th February 2021

Rights of appeal

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

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

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

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