



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT AT
BROMLEY SITTING AT 10 ALFRED
PLACE, LONDON WC1E 7LR**

Tribunal Reference : **LON/00AY/LSC/2020/0369**

Court Claim No : **GoAY89G9**

HMCTS Code : **CVP Remote**

Property : **Flat 3, 31 Thurlow Park Road, London SE21
8JP**

Applicant Claimant : **GR12 Limited**

Representative : **Mr Edward Blakeney – Counsel with Mr Peter
Gunby, Chartered Surveyor and Director of B
Bailey & Co Limited (Managing Agents)**

Respondent : **Charles Roberts**

Representative : **In person**

Type of Application : **Reasonableness and playability of service
charges (S278A Landlord and Tenant Act 1985**

Tribunal Members : **Tribunal Judge Dutton
Mr R Waterhouse BSc (Hons) LM Property
Law MA**

In the County Court : **Judge Dutton**

Date of Hearing : **10th June 2021**

Date of Decision : **9 July 2021**

DECISION

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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 CVP Video. A face to face hearing was not held because it was not practicable and no-one requested same and further that issues could be determined in a remote hearing.

The documents that we will refer to are in a bundle of some 613 pages and additional papers which have been noted by us during the course of the hearing. The order is as described at the end of these reasons.

DECISION

This decision takes effect and is “handed down” from the date it is sent to the parties by the Tribunal office:

Summary of this decision is made by the Tribunal

1. The following sums are payable by Charles Roberts to GR12 Limited by 16 August 2021
 - (i) in the period 24th June 2019 to 23rd June 2020 the sum of £1,372.50;
 - (ii) in the period 24th June 2018 to 23rd June 2019 the sum of £600.

Summary of decisions made by the Court

2. The following sums are payable by Charles Roberts to G12 Limited
 - (i) legal costs in the sum of £4,423.52 details of which appear below, to be paid by 13 August 2021
3. Interest at the rate of 2% above base rate (2.1%) £42.00 Again to be paid by 16 August 2021.

PROCEEDINGS

4. Proceedings were originally issued against the Respondent on 26th May 2020 in the County Court Business Centre under reference GOAY89GB. The proceedings were subsequently transferred to the County Court at Bromley on 28th September 2020. A defence was filed and proceedings subsequently transferred to this tribunal by order of the Court dated 10th November 2020, when DDJ Lynd made the order in the terms “*Transfer to the First Tier (Property) Tribunal*”.
5. The directions dated 9th December 2020 confirmed that the proceedings would be administered by the Tribunal and the Judge hearing the case would deal with all issues. The directions were varied subsequently by correspondence leading to this matter coming before us on 10th June 2021.

HEARING

6. The Applicant was represented by Mr Edward Blakeney of Counsel instructed by Brady Solicitors. The Respondent represented himself.

BACKGROUND

7. The subject property Flat 3, 31 Thurlow Park Road, London SE21 8JP (the Flat) is situated within the development known as 31 Thurlow Park Road. The Flat is held on terms of a lease dated 15th November 2013 made between Thurlow Park London Limited (1) and Core Relocations (2). There was some confusion on the terms of the lease as it appears the copy provided by the Land Registry only included every other page but another copy of lease was obtained and combined to provide a complete lease for the purposes of these proceedings.
8. Neither party requested an inspection and nor could one be undertaken given the current pandemic. However, we are satisfied that an inspection would not have taken the matter any further.
9. As we have indicated the Respondent holds under the terms of the lease which requires a landlord to provide services and the lessee to contribute towards their costs by way of a variable service charge. The relevant provisions to this case will be considered below.

ISSUES

10. In the statement of case it said that the claim relates to the following:-
 1. The service charge balancing sum for the period 24th June 2018 to 23rd June 2019 in the sum of £600 and for the period 24th June 2019 to 23rd June 2020 the sum of £1,372.50 which the totality of the service charge for that period.
 2. In addition to the above the Applicant seeks to recover interest at the rate of 2% above base rate and also contractual legal costs as a result of the breach of the lease and said to be in contemplation of exercising its right of forfeiture.
11. In a schedule prepared by Mr Roberts there are four items that he disputes. The first is legal costs in the sum of £2,002 which were included within the County Court proceedings. A breakdown of these costs is contained at paragraph 2.2 of the statement of case which is a document common to both parties. These costs continue into the Form N260 being the statement of costs for summary assessment which will be dealt with later in this decision.
12. At the start of the hearing Mr Roberts confirmed that he challenged the service charge cost of £2,002 for costs as the costs claimed by the Applicant in respect of their contemplation of forfeiture proceedings were not recoverable. He did, however, confirm that although there initially appeared to be challenges to the service charges, no claim was being pursued by him against the insurance nor did he challenge the service charge costs on a general basis.
13. We were taken to page 24 of the bundle, which is a service charge statement of account showing service charges claimed for the year to 23rd June 2019 in the sum of £1,215, an apportionment for the cost of works in the sum of £875.70 and the service charge for the year 24th June 2019 to 23rd June 2020 in the sum of £1,372.50. Against this there had been transfers from the ground rent account of £615, a transfer of 20p and another of £875.50 leaving the balance claimed of £1,972.50.
14. We had before us the statement of case that Mr Roberts had made dated 15th January 2021 (page 27) in which he requested the following:

- A clear and concise financial breakdown of monies owed.
- Evidence of service of a section 20 notice for major works.
- Quotes for major works and repairs carried out at the property.
- Evidence of repairs and major works carried out at the property.
- Full breakdown of general repairs and cleaning carried out at the property.

We will return to these matters.

15. In the opening Mr Blakeney said that clearly the lease provided for management and legal costs and that the proceedings were always intended to be in connection with intended forfeiture of the lease. He confirmed that in his view we had jurisdiction to consider the costs associated with the management fees for the section 20 works.
16. His first witness and indeed only witness, was Mr Peter Gunby who had made a witness statement dated 4th May 2021 which appeared in the bundle at pages 225 onwards. We have noted the contents of the witness statement. He was asked questions by Mr Roberts as to whether he had sought forfeiture, but he answered that was dealt with by the solicitor. He confirmed that he did manage a lot of properties and had looked at each lease, which was site-specific. In respect of the schedule that Mr Roberts had prepared at page 203 it was confirmed that the column completed under “Landlord’s Comments” was with the assistance of solicitors.
17. Mr Gunby confirmed that originally, they had an incomplete copy of the lease but had obtained a full copy for the hearing. He referred us to clause 5.5.6 of the lease which included at the landlord’s discretion the employment of a firm of managing agents to manage the property and carry out other responsibilities. It was put to him that the ground rent had been paid by Mr Roberts and that in those circumstances it was not possible for the lease to be forfeited.
18. Mr Roberts then went on in cross-examination to address the question of the apportionment for the costs of work. This appeared as an application for payment dated 23rd July 2028 at page 54 of the bundle. Mr Roberts appeared at this stage to accept that it was his error that this sum had in fact been paid by him at the time.
19. Mr Gunby was further questioned about the section 20 consultation which was to be found at page 436 onwards in the bundle. This showed that on 26th February 2018 emergency consultation works were undertaken setting out that which was required. It did say that *“normally with formal consultation one obtains the minimum of two estimates but because we are working with adjoining owners and because we are using a specific type of damp-proof course work which do not include injecting the wall, it is proposed to use the higher of the two quotes as the proposed methods are different and the wall has previously been injected and failed.”*
20. A letter of 12th April 2018 (page 438) is said to be the first stage consultation. This follows with a communal parts specification of works and the letter constituting the second stage of the consultation dated 13th June 2018. This included a schedule of estimates and here we must pause as this forms the nub of the £875,00.70 that Mr Roberts disputes. Page 292 of the bundles is a schedule of estimates showing the total costs as £3,502.80 of which a quarter share is

£875,00.70. This share is correct as there are four flats in the building. The total of £3,502.80 is made up of the works that are set out on the schedule of estimates and in addition the sum of £719.40 for B Bailey & Co's fees for overseeing the work, drawing up the specification and the CDM details. A further £810 for dealing with the estimates and analysis as well as sending out the contribution notices and a further sum of £179.40 being the contingency fee of 10% including VAT on the cost of the works. The difficulty Mr Roberts has in the regard is that he has paid this amount and did so some time ago.

21. Mr Roberts then gave evidence. He had produced a statement of case which we have noted. In oral submissions to us he said that he had not received documents in respect of the works done at the property. But the ground rent had been paid and accordingly there could be no forfeiture and the action to instruct solicitors was premature and he thought a bullying tactic. They did not consider there were any provisions in the lease allowing the recovery of the fees. Certainly he did not recall any conversation relating to forfeiture.
22. He was cross-examined by Mr Blakeney and admitted that he had acquired the lease in 2014. He did not seem to be certain as to the contents of the lease but did accept that he was a professional landlord and employed others to deal with the day to day running of his property portfolio. He was asked whether he had received a number of letters first dated 12th April 2018 being the first stage consultation, the second being the second stage consultation dated 13th June 2018 and the third being the application for payment in the sum of £875.70 dated 23rd July 2018. He said he did not recall receiving these letters although they appeared to be properly addressed to his own property. He told us that the assistant he has deals with the administration, but she does not work from his home address.
23. It was put to him that there had been a history of arrears in connection with his ownership of the flat and in that regard, we were referred to a Tomlin order (page 234) arising from County Court proceedings transferred to the First Tier Tribunal it would seem in 2017, when terms were agreed. This indicated that all service charges up to 23rd Jun3 2018 would be cleared upon receipt of the payments arranged. In respect of the claim made in relation to the service charge for 24th June 2019 to 23rd June 2020 he made the point that the lease provided for the service charges to be paid in two halves and that he should only have been required to pay half the amount on 5th May 2020. He did, however, confirm that nothing had been paid in that service charge year.
24. He was taken to the final demand dated 13th May 2019 for the service charge year 2018/19 showing the balancing charge of £600. This and the sums due in respect of the service charge year 2019/20 was sent to Mr Roberts by email on 24th June 2019. It was at this point, during the course of the hearing, that he said he had arranged for the sum of £1,972.50 to be paid today. He confirmed, however, that he did not remember seeing the demands and asked if there were problems with his post, which did not seem to be the case, why he had not informed the Applicants managing agents so that they could email correspondence to him.
25. Insofar as management costs were concerned he was of the view that the management fee was a fixed amount of £4,875 but in the estimated accounts for 2019/20 it is shown as £5,943. There are apparently 106 flats in the building. He

did not produce any comparable evidence but we were not also provided with a copy of the management agreement.

26. In submissions to us Mr Blakeney said that the dispute now appeared to be the question of the entitlement of costs. The dispute with regards to the insurance had fallen away and it did not seem that the management charges were now in issue, the more as Mr Roberts confirmed to us that had paid the amount of £1,972.50 to discharge the outstanding service charges to 23rd June 2020.
27. We were referred to a number of authorities. These were *Avon Estates v Sinclair Gardens*, *Kensquare Limited v Boakye*, *Chaplain v Kumari* all of which Mr Blakeney said supported that costs could be awarded where forfeiture was in contemplation, as he asserted was clearly the case from the final notices and the letter before action, which expressly refers to forfeiture.
28. In the case of *Chaplain* it is noted that long leases commonly provide the tenant must pay the landlord's costs incurred in connection with a notice under section 146 of the Law of Property Act 1925. Where the landlord obtains a determination of a Tribunal that service charges are payable by a tenant, the landlord's costs in relation to the Tribunal proceedings are, it has been held, incidental to the preparation of a section 146 notice and can be recovered as such, see *Freeholders of 69 Marina St Leonards-on-Sea v Oram* [2011]EWCACiv1258. In the *Chaplain* case the Applicant landlord in the position of this Applicant issued proceedings against leaseholders in the County Court which were then transferred to the then LVT for determination.
29. Mr Blakeney also relied on the case of *Kensquare Limited v Boakye* which was an Upper Tribunal case reference [2020]UKUT359LC. He did tell us, however, that this decision was under appeal and of course in this decision reference was made to a number of cases from higher authorities. He asked us to consider paragraph 64 onwards in this decision which had considered various cases relating to solicitors' costs. We have noted all that has been said.
30. He then dealt briefly with the question of assessment. He was questioned why the summary of costs had not been signed by a partner but he did not seem to think that that was relevant. His view was we were not bound by the 2010 Solicitors Guidelines and that CPR44.5 we need only consider the reasonableness of the costs incurred and the amount and the question of proportionality was not appropriate. He confirmed that his fees were based on a £125 per hour charge with a day of preparation and a day for the hearing. The fixed fees claimed in the court proceedings were in the terms of engagement but accepted that they had to be reasonable. His view, however, that costs claimed by the Applicant solicitors were reasonable and should be paid.
31. On the question of reasonableness on the part of Mr Roberts he drew to our attention that there was no particularisation of the defence that there had been disputes in relation to ground rent and insurance which were not pursued and that his position had changed. It was in his view it was the behaviour of Mr Roberts which had caused the costs to increase, coupled by the failure by him to comply with directions. His defences were in a scattergun fashion which had increased the Applicant's costs. We were reminded that in Mr Blakeney's view Mr Roberts was not a litigant in person but a professional landlord and that if Mr Roberts had dealt with the letter before action he would not be facing the costs

now before him. He urged that there should be no order made under section 20C.

32. In response Mr Roberts said that the service charges had been demanded incorrectly as they were sought on an annual basis rather than half yearly and that the legal fees were unreasonable. He told us that mediation had been requested but had not been undertaken. He also asked us to exercise some forbearance because of Covid and that in his view there was no evidence that the fees had been paid by the landlord. His view was that no costs should be paid as the demands were incorrect.

DECISION

33. During the course of the hearing Mr Roberts accepted by reason of payment of the total sum claimed that the costs were due and owing. At the start of the proceedings he had conceded that he was not challenging the service charges but seemed to be concentrating on the £875.70 which formed the fees included in the schedule of estimates set at page 292 of the bundle.
34. The problem with this argument was that Mr Roberts had paid these sums without demur. Indeed, they were paid some time ago, it seems in or around October of 2018. In those circumstances we consider that we do not have jurisdiction to consider this sum of £875.70, it having been paid by the Respondent and therefore falling within the provisions of section 27A(4). This case, therefore, in essence centres upon whether or not Mr Roberts should pay the Applicant's costs of these proceedings.
35. The clause relied upon by the Applicants is to be found at 3.1.9 of the lease which says as follows: *"To pay the landlord's costs, charges and expenses including solicitors, counsels and surveyors costs and fees at any time during the said term properly incurred by the landlord in or in contemplation of any proceedings in respect of this lease under section 146 or 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs, charges and expenses of and incidental to the preparation of a notice under the said sections and of and incidental to the inspection of the property and the drawing up of the schedule of dilapidations such costs, charges and expenses aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court."*
36. Considering the authorities that were put to us by Mr Blakeney we are of the view that this provision in the lease does enable the Applicant to recover the costs of these proceedings both in the County Court and in the First Tier Tribunal. Our finding is that the costs recoverable under the terms of the lease are an administration charge falling within schedule 11 of the Commonhold and Leasehold Reform Act 2002. By reference to paragraph 1(d) these costs are in connection with a breach or alleged breach of covenant or condition in the lease and also fall within sub-paragraph (c) in respect of a failure by the tenant to make a payment on the due date to the landlord or a person who is a party of the lease otherwise a landlord or tenant. Under those circumstances it seems to us that paragraph 5(a) or schedule 11 would apply. The question of an application under that paragraph is raised in the directions issued by Judge Carr on the 16th March 2021. It provides at sub-paragraph (4) that we should consider whether an order

under section 20C of the 1985 Act and/or paragraph 5(a) to the 2002 Act should be made. Our responsibility under this provision is therefore to consider whether the charge is reasonable.

37. We accept that CPR44.5 should be applied.
38. We therefore need to consider the summary of costs in this case. Of concern to us was the fact that this has not been signed by a partner in the firm. However, we accept for the purposes of this application that the practice direction 44.9.5 is met if the form is signed by the Applicant's legal representative.
39. Considering the statement of costs we make the following findings.
 1. The fees of Lorretta Cobson Grade C and Emma Voce Grade C are above those contained in the national guidelines for Nottingham National Grade 1. Whilst we appreciate that these are somewhat dated and new guidelines are in the offing, nonetheless it seems to us that the fees for Miss Voce should be £161 per hour and Miss Cobson £118 per hour. We have applied these rates throughout the assessment. Further we have assumed that the time recorded is on the basis of six-minute units which is the norm in connection with such matters.
 2. The first matter we wish to consider is the letters out and emails which are suggested to have been 7½ hours equalling some 45 letters and emails. Whilst this matter may have been running for a year that seems an excessive amount to my view. We would propose to reduce the numbers of letters and emails to 25 which at a rate of £16.10 per email/letter gives a **figure of £402.50** for this element.
 3. Under the heading Telephone we are prepared to accept that there have been six telephone attendances and at £16.10 this would give a **figure of £96**.
 4. We then consider the attendances on opponents of which it indicates that there were 16, which with the reduced hourly rate would give a **figure of £257.60** which seems to be reasonable.
 5. Under the heading Attendances on Others, we are given no indication as to who that might be. We are assuming it relates to correspondence with Mr Gunby and to the Tribunal. We are not convinced that costs should be paid in respect of letters to the Tribunal and to the Court but would allow an hour giving a **figure of £161.60** for this element. It is not clear to me who the telephone attendances would have been, but we will allow those as there is only two which gives a **figure of £32.20**
 6. We then need to consider the schedule of works. Although it is said that items 1 to 3 are fixed costs it seems to us that these are still capable of assessment. Our view is that for these three matters the letter before action should be no more than half an hour, that the correspondence with the mortgagees should again be no more than half an hour and that the preparation and the drafting including the review of a lease should have been dealt with within an hour. **This therefore gives £322.20 for these fixed costs.**
 7. We have then reviewed the other documentation details from 4 onwards. The County Court defence is one page or two at best, the directions questionnaire are very straightforward and could probably have been dealt with by Miss Cobson and the same would apply to the creation of the digital hearing bundle. Bearing in mind the amended hourly rates that we have considered above and the value of this claim at under £2,000 we conclude that a **figure**

of **£1,000** would be reasonable in respect of the remainder of the work set out on the schedule of costs to which should be added the £322 which we have referred to above. This gives a figure of £1,322.20 for this element. When added to the other figures that we have indicated this gives a **total solicitors costs in respect of these proceedings of £2,272.10.**

8. We consider Counsel's fees to be excessive for this nature of case. We accept that Mr Blakeney is an experienced Barrister in dealing with these claims but this is after all a claim in the sum of under £2,000 and a Counsel's fee of £2,500 seems to us to be excessive. We would propose to reduce that to **£1,250.** The Court fee is claimed at £385 but we do not know where the additional £200 has come from as the amount shown on the Court papers is £185 and the Land Registry fees are perfectly acceptable. This gives a total amount of fees of £3,522.10 to which VAT of £704.42, plus £185 and £12.00 in disbursements needs to be added. **This gives a total figure of costs on an inclusive basis of £4,423.52.**
9. Whilst we accept that proportionality is not relevant in contractual costs, we do need to consider whether the costs are reasonable under the 2002 Act. Although we accept Mr Roberts is a professional landlord, he is not a lawyer. The total amount of costs after assessment is £4,423.52 for a claim of under £2,000. However, the Applicant has been successful and has been required to proceed to Court with a last minute, mid hearing concession by the Respondent, Mr Roberts. In those circumstances we are satisfied this is the correct level of costs bearing in mind all that we are required to consider in this regard.

RATE OF INTEREST

40. The sum sought by the landlord in this regard is 2% above base rate which is acceptable. In the particulars of claim the Applicant is claiming the Court rate of 8% which seems to us to be too high but this is not the basis upon which the claim is made in the statement of case which we prefer. The Barclays Bank base rate seems to be 0.1% from 19th March 2020 and we have therefore applied the rate of 2.1% to the debt.
41. The award of interest in a discretionary matter and the sums involved of little consequence. We consider that a year at 2.1% should be sufficient to compensate the Applicant, which on the sum of £1,972.50 gives an interest figure of **say £42.**

CONCLUSION

42. By way of conclusion the following awards are made:
 1. Service charge £1,972.50
 2. Legal costs £4,423.52
 3. Interest at 2.1% in accordance with the terms of the lease and as pleaded in the statement of case in the sum of £42.00. We have drawn a form of judgment which will be submitted with these reasons to the County Court sitting at Bromley to be entered in the Court record. All payments are to be made by 16 August 2021.

Andrew Dutton

Judge: _____

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Date	9 July 2021
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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 tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal 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. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.