FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT MONEY CLAIMS CENTRE, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/00BK/LSC/2020/0330**
Court claim number	**:**	**G52YJ280**
HMCTS code	**:**	**V: VHS**
Property	**:**	**Flat 2, 131-132 Park Lane, London W1K 7AD**
Applicant/Claimant	**:**	**131 Park Lane Real Estate Limited**
Representative	**:**	**Mr S Madge-Wyld of Counsel**
Respondent/Defendant	**:**	**Mr Vladimir Demjanenko**
Representative	**:**	**UK Law Solicitors**
Tribunal members	**:**	**Judge P Korn and Mr R Waterhouse**
In the county court	**:**	**Judge P Korn, with Mr R Waterhouse as assessor**
Date of decision	**:**	**12th July 2021**

DECISION

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

Summary of the decisions made by the Tribunal

1. The following sums are payable by the Respondent to the Applicant:

(i) Service charges: £39,486.17;
(ii) Administration charges (comprising late payment charges): £216.00.

Summary of the decisions made by the Court

(iii) The following are payable by the Respondent/Defendant to the Applicant/Claimant:

(a) court fee of £2,323.25;

(b) interest in an amount to be determined; and

(c) the Applicant's wasted costs in relation to the adjourned hearing on 5th March 2021 in an amount to be determined.

The proceedings

2. Proceedings were originally issued against the Respondent in July 2020 in the County Court under claim number G52YJ280. The Respondent filed a Defence dated 18th August 2020. The case was allocated to the multi-track, and proceedings were transferred to this Tribunal by the order of Deputy District Judge Goodwin dated 22nd October 2020.

3. Directions were issued and the matter eventually came to hearing on 24th June 2021, a previous hearing on 5th March 2021 having been adjourned.

The hearing

4. The Applicant landlord, 131 Park Labe Real Estate Limited, was represented by Mr S Madge-Wyld of counsel, instructed by KDL Law solicitors. The Respondent leaseholder, Mr Vladimir Demjanenko, was represented by UK Law Solicitors.

5. The hearing took place as a remote video hearing which was consented to by the parties. The form of remote hearing was V: VHS. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in a series of electronic bundles, the contents of which we have noted.

The background

6. The Respondent holds a long lease of the Property, which requires the landlord to provide services and for the leaseholder to contribute towards their costs by way of a variable service charge.

7. Neither party requested an inspection of the Property, and nor did the tribunal consider that one was necessary or that one would have been proportionate to the issues in dispute.

The issues

8. The sums claimed by the Applicant were as follows:

   (i) Service charges (including building insurance premiums) in respect of invoices spanning the period 16.10.2017 to 01.01.2020 inclusive totalling £39,486.17;

   (ii) Late payment charges dated 1st February 2019, 12th August 2019 and 25th February 2020 in the aggregate sum of £216.00;

   (iii) Court fee of £2,323.25;

   (iv) Interest and legal costs to the date of issue.

9. At the start of the hearing the parties identified the relevant issue for decision as being whether the Applicant was estopped from demanding more than 2.5% of the cost of employing porters.

County court issues

10. After the proceedings were sent to the Tribunal offices, the Tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

Strike-out application

11. The Respondent had initially applied for the Applicant's claim to be struck out but his representative stated at the hearing that the Respondent was no longer pursuing the strike-out application.

Respondent's case

12. The Respondent had originally argued that the Applicant's claim was based on a significantly higher service charge than that set out in the Respondent's lease ("**the Lease**"). This argument was based on the Respondent's belief at the relevant time that a deed of variation/rectification on which the Applicant sought to rely was not fully signed and witnessed and was therefore not legally effective.

13. The Applicant has since provided the Respondent with a copy of the signed and witnessed deed of variation/rectification, and the Respondent now accepts that the deed of variation/rectification is in place. However, the Respondent is not the original leaseholder, and he states that the deed of variation/rectification of the Lease was entered

into only a matter of days before the Lease was assigned to the Respondent.

14. The Lease defines the Service Charge as the aggregate of the Part I Service Percentage of the Part I Annual Expenditure and the Part II Service Percentage of the Part II Annual Expenditure. The Part I Service Percentage is defined as *"2.653% of the Part I Service Charge subject to the provision for variation contained in paragraph 1.4 of the Ninth Schedule"* and the Part II Service Percentage is defined as *"0% of the Part I Service Charge subject to the provision for variation contained in paragraph 1.4 of the Ninth Schedule"*. As far as the Respondent was aware this remained the position, and he had no knowledge of the existence of the deed of variation/rectification before buying the Property by taking an assignment of the Lease.

15. In email correspondence with the Applicant's managing agents on 14th June 2018 the Respondent stated that *"we have agreed with all of the tenants and someone with your company that we are only paying 2.5% of the porter fees according to our lease"*, and then on the same day Mr Lambertucci of the managing agents emailed him back stating *"Dear Vladimir, To confirm that the service charge appointments have been revised in accordance with the lease terms. Your contribution towards site staff is now 2.5 percent. Therefore the existing charges are to be reversed and new demands issued."*.

16. The above statement by Mr Lambertucci turned out to be incorrect as it did not take into account the change brought about by the deed of variation/rectification. The Respondent argues that he relied on Mr Lambertucci's representation and that payments were made in accordance with that representation until a demand for a higher service charge was received shortly before the Applicant instituted these proceedings. The Respondent's case is that the Applicant is estopped from relying on the deed of variation/rectification to increase the service charges.

17. The Respondent goes on to state that the law on estoppel in these circumstances is best expressed by the judgment of Lord Steyn in *Republic of India v India Steam Ship Company Limited (1998) AC 878* where he stated:

"It is settled that an estoppel may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by both of them or made by one and acquiescing by the other. The effect of the estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on an assumption … it is not enough that each of the two parties acts on an assumption not communicated to the other. But it was rightly accepted by counsel for both parties that a concluded agreement is not required for an estoppel by convention.".

18. In *HMRC v Benchdollar Ltd (2009) EWHC 1310 (Ch)*, Briggs J set out the principles applicable to the assertion of an estoppel by convention arising out of non-contractual dealings as follows:-

(i) it is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them;

(ii) the expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it;

(iii) the person alleging the estoppel must in fact have relied upon the common assumption, to a significant extent, rather than merely upon his own independent view of the matter;

(iv) that reliance must have occurred in connection with some subsequent mutual dealing between the parties; and

(v) some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position.

19. In *Admiralty Park Management Co Ltd v Ojo (2016) UKUT 421 (LC)*, Mr Martin Roger QC sitting in the Upper Tribunal dealt with a case in which estoppel by convention arose and stated as follows: *"Mr Ojo acquiesced in that manner of calculating the Maintenance Charge … He may not have fully appreciated the requirements of the lease … but he had the opportunity to read his lease and understand how service charges were supposed to be accounted for. Taking his prolonged acquiescence into account, and having regard additionally to the fact that in 2011 Mr Ojo did not dispute liability in principle for charges computed in the same way, it seems to me that a conventional mode of dealing existed between the appellant and Mr Ojo under which it was understood the Maintenance Charges were to be apportioned on the basis that each leaseholder was obliged to contribute towards expenditure on all nine leasehold buildings…"*.

20. The Respondent submits that in the present case the parties expressly shared a common assumption upon which the estoppel is based, the managing agents expressly informed the Respondent that the service charges were as set out in the Lease and the Respondent paid that lower figure for a significant period. The Respondent clearly relied on the managing agents' representations, and had he been aware of the

variation/rectification he would have sold the Property rather than pay the significantly higher service charges.

21. At the hearing the Respondent's representative submitted that the estoppel persisted from 14th June 2018. He did not seek to argue that the estoppel argument related to any charges other than the porterage charges.

Applicant's case

22. In written submissions the Applicant sets out the relevant provisions of the Lease relating to service charges, administration charges and the payment of interest, as well as the basic factual background to the claim.

23. On the question of whether the Applicant was estopped from demanding more than 2.5% of the cost of employing porters, in written submissions the Applicant refers to a statement by the editors of Snell's Equity as to the requirements for the establishment of a promissory estoppel. The Applicant adds that it is extremely doubtful that the Respondent altered his position by relying on the statement of the Applicant's managing agents. Even if he did do so, that statement was corrected in subsequent emails on 12th and 13th December 2018 and therefore even if there was an estoppel any such estoppel would have ceased to have effect from December 2018.

24. At the hearing, Counsel for the Applicant agreed that the legal authorities cited by the Respondent were the relevant legal authorities. He also said that the Applicant accepted that the Respondent had been given a mistaken understanding of the true position on porterage charges. However, the Applicant did not accept that there had been an estoppel, because in the Applicant's submission for the estoppel argument to succeed there needed to both reliance and detriment.

25. In this case, there was insufficient evidence of reliance and detriment. There was merely a bare assertion which was uncorroborated. In addition, the existence of the deed of variation/rectification should have been known about by the Respondent's solicitors when applying to register the assignment of the Lease to the Respondent.

26. Counsel for the Applicant also noted that the Respondent had not paid any service charge at all since 2019.

Witness evidence

27. The hearing bundle contains a witness statement from Ms Simone Carlon, Director of Property Management at Principia Estate & Asset Management, the Applicant's managing agents. Ms Carlon made

herself available for cross-examination and various questions were put to her at the hearing.

28. The hearing bundle also contains a witness statement from the Respondent. In cross-examination, Counsel for the Applicant asked him about his assertion that he relied on the representation of the management company and that he would have sold the Property if he had known that the representation in question was incorrect. The Respondent conceded that he has still not sold the Property, even though he has known about the true level of the service charges for a considerable period, but he added that the Property has been on the market since 2018. Counsel for the Applicant noted that there was no independent evidence in the hearing bundle that the Property has been on the market.

Analysis and Decision

29. The Applicant's interpretation of the relevant provisions of the Lease is not disputed by the Respondent, and nor is the factual background to the claim or the validity of any of the demands. The claim is only disputed in part, and that part solely on the ground of estoppel.

30. In written submissions, the Applicant refers to a statement by the editors of Snell's Equity as to the requirements for the establishment of a promissory estoppel, but the Respondent's case is based not on the principle of promissory estoppel as summarised by the editors of Snell's Equity but rather on the specific doctrine of estoppel by convention. The extract from Snell's Equity is therefore, in our view, not germane to the issue in dispute.

31. At the hearing the parties were in agreement as to what were the relevant authorities in relation to estoppel by convention. In *Republic of India v India Steam Ship Company Limited* Lord Steyn stated that it was settled law that *"estoppel may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by both of them or made by one and acquiescing by the other."* He then added that the effect of an estoppel by convention was *"to preclude a party from denying the assumed facts or law if it would be unjust to allow him to [do so]"*.

32. Following on from the summary of the basic principle by Lord Steyn as quoted above, in *HMRC v Benchdollar Ltd (2009) EWHC 1310 (Ch)*, Briggs J set out certain details applicable to the assertion of an estoppel by convention. To summarise these briefly, the common assumption needed to be expressly shared, the party alleged to be estopped must have conveyed an expectation that the other party would rely on that assumption, the other party must in fact have relied on it to a significant extent in connection with some subsequent mutual dealing

between the parties and some detriment must have thereby been suffered.

33. We note that the Respondent has also quoted an extract from the decision of the Upper Tribunal in *Admiralty Park Management Co Ltd v Ojo*, but we are not persuaded that the case in question – with a very different factual matrix – is of much assistance in our case.

34. Taking the test set out in *HMRC v Benchdollar Ltd*, there is some evidence of a shared assumption. Mr Lambertucci was employed by the Applicant's managing agents, and based on the information before us the Respondent had good reason to believe that when summarising the percentage payable in respect of a particular service charge item Mr Lambertucci was doing so on behalf of and with the full authority of the Applicant and therefore that the position set out by him was the Applicant's own position. Furthermore, his email of 14th June 2018 effectively expresses agreement with the position set out in the Respondent's email of the same date and therefore we accept that it demonstrates a shared assumption.

35. As to whether Mr Lambertucci on behalf of the Applicant conveyed an expectation that the Respondent would rely on the statement which gave rise to the common assumption, again we accept that he did convey that expectation. Although there is in our view a question as to the **purpose** for which the Respondent would rely on it, nevertheless Mr Lambertucci's statement was made in writing (by email), it was clear that the query had been passed on to him as the person who knew or was likely to know the answer, and there is no proper basis for concluding that his expectation was anything other than that the Respondent would believe the statement to be true and would therefore rely on it.

36. The other requirements are that the Respondent must in fact have relied on the statement to a significant extent in connection with some subsequent mutual dealing and that some detriment must have thereby been suffered.

37. Taking the first of those two final requirements, neither party has made any submissions on the question of what reliance "in connection with some subsequent mutual dealing" actually means or what would qualify as a subsequent mutual dealing on the facts of this case. It may be that the mutual dealing is assumed to be the future payment of service charge, but it is not clear on the facts of this case that there has been significant reliance specifically "in connection with some subsequent mutual dealing between the parties".

38. In any event, we are not persuaded that the Respondent has suffered detriment. His only argument on detriment is that he would have sold the Property if he had known that Mr Lambertucci's statement was

incorrect. It is very easy to claim that one would have acted in a certain way if certain facts had been known, but the Respondent has brought no independent evidence whatsoever to corroborate this assertion. And whilst we accept that it is not always a straightforward matter to prove a negative, in this case there were various – perfectly simple – things that the Respondent might have done to support his claim of detriment, including (but not limited to) evidence that the Property has been on the market since he obtained accurate information as to the amount of service charge payable.

39. In conclusion, therefore, we are not persuaded that the Respondent can rely on estoppel by convention on the facts of this case.

40. In the absence of any other challenge by the Respondent and on our being satisfied that the Applicant has made a prima facie case that these charges were all properly demanded and are all due in full, the Tribunal determines that all of the service charges and administration charges set out in sub-paragraphs 7(i) and 7(ii) above are payable in full.

41. In addition, as the Applicant has been wholly successful in its claim, sitting as a County Court Judge I determine that the Respondent must reimburse to the Applicant the court fee of £2,323.25 and must pay interest in a sum to be calculated.

Cost applications and assessment and interest calculation

42. At an earlier hearing on 5th March 2021, which was adjourned, Tribunal Judge Mohabir ordered that the Respondent pay the Applicant's wasted costs of that adjourned hearing in an amount to be assessed and he refused the Respondent's application for permission to appeal that wasted costs order. The Applicant has claimed a total of £7,269.00 by way of wasted costs, but the Respondent has not yet been given an opportunity to make written submissions as to quantum.

43. In addition, the parties need to be given an opportunity to make written submissions on any other cost applications as well as brief submissions ads to the amount of interest payable.

44. Accordingly, the following further directions are hereby issued:-

FURTHER DIRECTIONS

(i) By **26th July 2021** the Respondent may (but shall not be obliged to) make written submissions on the quantum of the Applicant's wasted costs.

(ii) By **2nd August 2021** the Applicant may provide a written response to the Respondent's submissions on the wasted costs (if any).

(iii) By **26th July 2021** a party wishing to make any other cost application must make written submissions in support of that cost application, clearly identifying the basis for the application and justifying the amount sought. For the avoidance of doubt, the Applicant should confirm the amount sought by way of legal costs up to the date of issue together with a breakdown thereof.

(iv) By **9th August 2021** a party wishing to oppose a cost application that has been made under (iii) above may make written submissions opposing the application in question.

(v) By **26th July 2021** the Applicant shall provide its calculation of the total amount of interest that it considers to be payable and any relevant arguments in support.

(vi) By **2nd August 2021** the Respondent may make written submissions on the Applicant's interest calculation and on its arguments for a particular rate of interest.

(vii) All written submissions must be sent to the Tribunal/Court by email at London.Rap@Justice.gov.uk quoting the case reference and property address and must also be copied to the other party.

Name: Judge P Korn **Date:** 12th July 2021

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.