FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/34UH/LSC/2021/0040**
HMCTS code (paper, video, audio)	**:**	**A:BTMMREMOTE**
Property	**:**	**Flat 6, St Mary's Court, Church Street, Diss IP22 4DR**
Applicant	**:**	**Michael Norman**
Respondent	**:**	**Proxima GR Properties Ltd**
Representative	**:**	**J B Leitch**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge David Wyatt**
Date of decision	**:**	**17 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. 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 I was referred to are described in paragraphs 1-5 below. I have noted the contents.

The tribunal's decision

The tribunal strikes out these proceedings under rule 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**").

Reasons for the tribunal's decision

Background

1. In their decision on a previous application by the Applicant under section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**"), a tribunal determined payability of service charges for 2017, 2018 and 2019 (CAM/33UH/LSC/2019/0059). The Applicant's challenges to various service charges were unsuccessful, as was his application for an order under section 20C of the 1985 Act. However, the relevant tribunal made various comments in passing. For example, they expressed concern about the charging of management fees as a percentage, while noting the Applicant had been unable to explain why the actual amount charged was not reasonable, or to propose any alternative figure, and no alternative quotation or other evidence had been produced to indicate the amounts charged were not reasonable. They also urged the Respondent to be "*much, much clearer*" in their accounting documentation in future.

2. These proceedings are a new application by the Applicant under section 27A of the 1985 Act to determine payability of service charges. The application form enclosed a volume of reference documents and extracts from documents. It referred to service charges from 2012 to 2021. It also sought orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**"). On 28 July 2021, I gave case management directions. These directed that unless by 6 August 2021 the Applicant applied to the tribunal with an explanation of any issues in relation to pre-2017 service charges and a request for a case management conference, the parts of the application seeking determination of payability of service charges up to 2019 would be automatically struck out. The Applicant made no such application and accordingly, by Rule 9(1), those parts of the application were automatically struck out.

3. The directions provided for the case to continue in respect of service charges for 2020 and 2021 only. It appeared the Applicant was seeking to challenge unspecified management fees, contributions to a contingency fund and a redecoration fund, and legal fees said to have been included in the accounts for 2020. The directions required the Applicant to produce his case documents by 19 August 2021, including schedules in the form attached to the directions for 2020 and 2021, completed by the Applicant to set out each item and amount in dispute, the reasons why the amount was disputed and the amount, if any, the leaseholder would pay for that item. The directions warned that, if the Applicant failed to comply with them, the proceedings or his case could be struck out.

4. The Applicant failed to comply with those directions, producing no schedules of disputed costs. Instead, by letter dated 11 August 2021, he produced a statement and a small number of additional documents largely referring to those enclosed with his application form. His statement made it clear that his application had been intended to demonstrate that the Respondent's managing agent (FirstPort Retirement Property Services Ltd) were unsuitable to be involved in the management of a retirement property. It concludes: "*My intention with this complaint is not to seek a judgment on many individual items, but to have the overall actions of FirstPort reviewed and a replacement organisation appointed in whom we can trust and rely*".

5. On 11 August 2021, the Respondent's representatives (JB Leitch) wrote to confirm they had been instructed and to suggest determination of the remaining part of the application (for 2020 and 2021) on paper, without a hearing. On 19 August 2021, having received the Applicant's case documents, the Respondent's representatives wrote to request that the proceedings be "*dismissed*". They did not "*properly understand*" the documents which had been provided by the Applicant, but also submitted that the Applicant had made the application under section 27A in error, since the type of relief he had described is outside the scope of section 27A of the 1985 Act. I directed that a case management hearing be arranged and the remaining case management directions were suspended in the interim. Copies of the correspondence from the Respondent's representatives were enclosed with the letter arranging the hearing.

Hearing

6. The hearing by telephone on 16 September 2021 was attended by the Applicant and by Mitchell Hayden-Cook, counsel for the Respondent. I recited the background (as set out above) and confirmed that after hearing from the parties I would consider whether to strike out the applications under Rule 9 for failure to comply with the directions and/or on the basis that the tribunal would not have jurisdiction to grant the only relief the Applicant appeared from his later documents to be seeking.

7. The Applicant said that, in fact, he was seeking to challenge some service charges for 2020 and 2021, in addition to asking that the methods of the managing agents be reviewed against the previous decision, seeking to refer to issues from 2009 onwards. He could not explain why he had not complied with the directions, beyond saying he had not been sure about what was required. Now that he understood, he was not prepared to produce schedules or further documents for 2020/2021. He suggested this would be pointless and he would raise his concerns about the management of the Property in another forum instead. He did not wish to ask for more time to comply with the directions or to withdraw his applications.

Conclusion

8. In the circumstances, I decided to strike out the proceedings under Rule 9(3)(a). It is difficult to follow the documents the Applicant has produced, let alone to seek to understand precisely which charges are being disputed and on what grounds. The parts of his application which sought review of matters up to 2019 had already been struck out, as explained above. Even if they had not, the tribunal cannot re-determine matters decided in previous decisions or enforce previous decisions. If a party thinks a previous decision has not been complied with, they should take advice on their position and any action they may be able to take, consulting Lease Advice (www.lease-advice.org) or other independent legal advisers. The Applicant is not prepared to comply with the directions to produce documents which are sufficiently clear to expect the Respondent to answer. Further, despite the comments in the previous decision, he does not appear to have produced any proposed figures or alternative quotations, or the like, in relation to any service charges. I am satisfied that it would not be in accordance with the overriding objective to allow these proceedings to continue any further.

9. There was no suggestion that the Respondent would attempt to make any administration charge against the Applicant in respect of the costs of these proceedings. As such, there is no charge in respect of which an order could be made under paragraph 5A of Schedule 11 to the 2002 Act, even if the application for that order had not already been struck out. The Applicant could not give any reasons why I should make an order under section 20C of the 1985 Act, beyond saying that he had not been aware (when he said he did not wish to have more time to comply with the directions) that the Respondent might attempt to recover their costs of these proceedings through the service charge. I was satisfied that, even if the proceedings had not already been struck out, it would not be just and equitable to make such an order. The Applicant has chosen to bring these proceedings and not to follow the case management directions despite his involvement in the previous proceedings under section 27A. He knew, or ought to have known, that the Respondent might attempt to recover their costs through the service charge; he made the application under section 20C to seek to prevent that and his application for such an order in the previous proceedings had been unsuccessful. The directions from the tribunal should have minimised the costs incurred by the Respondent and their responses to the application appear to have been reasonable. However, I make no finding about whether the Respondent is entitled under the terms of the lease to recover any such costs through the service charge. If it is not, or if those costs are not reasonable, the leaseholders will not be precluded from making an application under section 27A of the 1985 Act (and, potentially, section 20C) in respect of any such costs the Respondent attempts to recover through the service charge.

Name: Judge David Wyatt **Date:** 17 September 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).