



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

Case reference : **CHI/21UG/LSC/2022/0107**

Property : **Flat 1, 30 Park Road, Bexhill-on-Sea, East Sussex TN39 3HX**

Applicant : **30 Park Road (Bexhill) Limited**

Representative :

Respondent : **Mr Trevor Catt**

Representative :

Type of application : **Transferred Proceedings from County Court in relation to service charges**

Tribunal member(s) : **Judge D Whitney
Mr P Turner-Powell FRICS
Ms T Wong**

Date of hearing : **9th January 2023**

Date of decision : **9th January 2023**

DECISION

Background

1. The Applicant seeks, and following a transfer from the County Court the Tribunal is required to make, a determination of the service charges. These are matters within the jurisdiction of the Tribunal.
2. The original proceedings were issued in the County Court under Claim No.H39YJ625 and were transferred to the Tribunal by District Judge Owen by order dated 2nd August 2022
3. For the purposes of the County Court issues, the proceedings have been allocated to the small claims track. The Respondent had filed a Defence.
4. Directions were issued on 7th October 2022. Those directions had been substantially complied with and the Tribunal had before it an electronic bundle. References in [] are to the pdf pages of the 288 page bundle.

Hearing & Decision

5. The Applicant was represented by Messrs. Burridge, Smith and Kilburn as directors (and leaseholders) each of whom had given a witness statement. Mr Catt appeared in person.
6. At the outset the Tribunal identified that it needed to be satisfied that valid demands had been issued to the Respondent, whether or not proper statutory consultation had been undertaken and whether or not the costs of the works were reasonable. Mr Catt had raised all such matters within his Defence as well as seeking a set off for various amounts.
7. The Applicant relied upon the documents served purporting to be a Section 20 consultation [113,117 and 120] as its demands for payment of the costs of the major works. It believed these were service charge demands. It was explained that historically the company operated by way of sending emails to all 4 leaseholders requesting payments of amounts due. The Applicants included some emails within the bundle and referred to [151] being an email from Mr Kilburn to Mr Catt dated 27th September 2021.
8. The Applicants referred to the various documents within the bundle in which the works were referred to and stated that Mr Catt was aware of his need to pay towards the same. The Applicants advised that in the past the usual method of communication was by way of emails.
9. In respect of the Section 20 Notices the Applicants accepted that the Initial Notice [113] suggested the consultation period would end on 12th March 2021. They accepted the second stage notice was dated 10th March 2021 and did not include any reference to the quote from Mr Catts company. The two quotes listed were for acrylic render although this was not in fact what was undertaken.

10. The Applicants confirmed they were seeking the costs of the major works only from Mr Catt which totalled £6,910. The total cost to the Applicant being some £27,640. An initial invoice for a deposit [133] was in the bundle from Brickers and Son Ltd but no subsequent invoices. Further it was accepted there was only an extract from the survey report obtained by Mr Burridge as part of his purchase which led to the works.
11. The directors of the Applicants explained they were all lay people and did what they thought was correct. Mr Smith acknowledged that Mr Catt had told them he could not afford to pay for the works and previously there had been a dispute with Mr Catt. The Applicants had now appointed managing agents for the building as a whole.
12. Mr Catt believed that the company had agreed he could simply pay monthly amounts and had waived any rights it may have had to demand larger payments as and when they fell due. His reasoning for this was the fact that this was the way the company had conducted its affairs for many years. He did not accept he had received valid demands or that the company had undertaken a proper consultation. Further he challenged the reasonableness of the charges. He did not believe all the works were required or that they were properly undertaken. He referred to the fact that he had told the company that acrylic render was not suitable and ultimately the company had not gone down this route after taking some professional advice.
13. The Tribunal heard from the parties and then orally told the parties of its determination before the Judge sitting as a judge of the County Court dealt with any outstanding matters. The parties were advised a short set of reasons would be issued in writing.
14. The Tribunal was not satisfied any valid demand had been issued. There was no document which set out the amounts being claimed and which complied with the statutory requirements for any such demand including a statement of rights and obligations. A challenge on this basis did form part of the Respondents defence and so we are satisfied that currently the Respondent has no liability for the costs of the major works claimed by the Applicant.
15. Whilst the Applicant contended the purported consultation documents were demands we as a matter of fact found they did not act as such. They did not comply with the statutory requirements and no summary of rights and obligations were attached. We were not satisfied that there were documents setting out the amount claimed which could be said to be service charge demands.
16. We also found that the statutory consultation undertaken by the Applicant in respect of the major works was defective. In respect of the initial specified works there had been an attempt to comply with the requirements. However breaches of the requirements have taken place in that the second stage notice was issued prior to the expiry of the

consultation period. In our judgment this is a breach of the requirements and whilst it may be technical it does in our judgment mean the consultation was not properly undertaken.

17. It also appears that Mr Catt had effectively nominated himself and provided an estimate but this is not referred to within the second stage (or third stage) notices and is a further breach. We also record that it appears that further works were identified after the works began including structural repairs. The cost of the works rose from £11,640 to in excess of £27,000 and it appears no consultation or application for dispensation was made in respect of the further structural works we were told were undertaken.
18. For all of these reasons currently even if a proper demand was made the Respondent would not be liable to pay more than £250 towards such costs.
19. We did consider if we could assess what the reasonable cost of the works would be. We declined to do so. We did not have copies of all the invoices claimed nor were we satisfied that we had sufficient evidence to determine the same.
20. In conclusion we determined that the Respondent was not currently liable for the sum claimed.

Rights of appeal

Appeals in respect of decisions made by the Tribunal

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 must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk.

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).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to an appeal judge in the County Court since No application was made to the Judge at the hearing.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues by proceeding directly to the County Court.