



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

**Property:** 168 Olivia Court, Asgard Drive, Salford, M5 4TR

**Applicants:** Twiga Investments Ltd

**Respondent:** Regent Park (Salford) RTM Company Ltd

**Case number:** MAN/00BR/LSC/2022/0050

**Type of Application:** S27A Landlord and Tenant Act 1985

**Tribunal Members** K M Southby (Judge)  
N Swain (Expert Valuer Member)

**Date of Decision** 06 March 2023

**Date of Determination** 13 March 2023

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**DECISION AND REASONS**

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## **DECISION**

- 1. The Applicant's claim is struck out under Rule 9(2)(a) and 9(3)(e) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 as the Tribunal considers there is no reasonable prospect of the Applicant's case succeeding and Tribunal does not have jurisdiction in relation to the case.**
- 2. The Applicant is to pay the sum of £6170 plus £1234 VAT in costs to the Respondent.**

## **BACKGROUND**

1. The Tribunal has received an application under s27A of the Landlord and Tenant Act 1985
2. There was no inspection of the property.
3. The application before the Tribunal is for the determination of the reasonableness and payability of service charges for the years 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22.

## **HEARING**

3. The matter was heard by way of a VHS Video Hearing on 8 February 2023 before Tribunal Judge Katherine Southby and Tribunal Member Neil Swain. Ms Angela Jones attended on behalf of the Applicant. Ms Empson of Counsel attended on behalf of the Respondent. There were no witnesses. Both parties confirmed that they could see and hear and were able to fully participate. There were no connectivity issues of any significance.
4. The Tribunal was provided with a bundle of 554 electronic pages. Both parties confirmed that there were no further documents to consider, save for the skeleton argument and authorities provided in advance by the Respondent.

## **CHRONOLOGY**

5. 1/01/1984 The lease for the Property (dated 25 January 1985) commences for a period of 125 years.
6. 05/2011 Respondent becomes an RTM company and appoints Block Property Management Ltd ("BPM") to manage the building comprising 170 flats.
7. 06/04/2018 Applicant purchases the Property.
8. 29/07/2020 A decision is given by the FTT with respect to an application for a determination of service charge liability by Mr Anthony McGrath and Mr Derrick Clarke for 2017/18 and 2018/19 in respect of the same Property with the same terms of lease ("the McGrath Decision"). The FTT determined the full sum for each service charge challenged in each year were payable.

9. 20/10/2021 A decision is given by the FTT with respect to an application for a determination of service charge liability by Mr Louis Smith in respect of the same property with the same terms of lease for the years ending 30 June 2014 to 2019. (“the Smith Decision”). The matter was ultimately struck out.
10. 04/05/2022 Applicant issues the Application.

### **THE PROPERTY**

11. The Property is a four-storey residential block with grassed areas and car park attached.

### **THE LAW**

7. S47 of the Landlord and Tenant Act 1987 states as follows:  
***Landlord’s name and address to be contained in demands for rent etc.***  
*(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—*
  - (a) the name and address of the landlord, and*
  - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.*  
*(2) Where—*
  - (a) a tenant of any such premises is given such a demand, but*
  - (b) it does not contain any information required to be contained in it by virtue of subsection (1),*  
*then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.*
8. Section 27A(1) of the 1985 Act provides:  
*An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—*
  - (a) the person by whom it is payable,*
  - (b) the person to whom it is payable,*
  - (c) the amount which is payable,*
  - (d) the date at or by which it is payable, and*
  - (e) the manner in which it is payable.*

The Tribunal is “the appropriate tribunal” for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

9. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It means:

*... an amount payable by a tenant of a dwelling as part of or in addition to the rent—*

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs.*

In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

*Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*

- (a) only to the extent that they are reasonably incurred, and*
  - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.*

10. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

## **PRELIMINARY ISSUES**

12. The Respondent raised an issue concerning whether the Tribunal has jurisdiction to consider the application. In part the Respondent raises issues surrounding previous determination of the identical issues, but also whether in fact the Applicant’s claim is for breach of covenant/duty rather than reasonableness and payability of service charge. The Tribunal determined that the appropriate, fair and proportionate approach was to consider this matter as a preliminary issue.
13. The Respondent drew the Tribunal’s attention to A’s Reply to R’s statement of case, A states as follows (without any indication as to whether this relates to one area of dispute, or to the entirety of its case):  
*“4. The reasonableness of the cost is not in question but the priority of spending is. Members raise questions about urgent work needed to be told “When funds are available” but large amounts have been found and spent on items not at the top of members fault lists, i.e. crumbling concrete and damp in most blocks on the staircases and balconies” [120] (emphasis added)*
14. The Tribunal explicitly queried with Ms Jones if indeed the reasonableness of the cost was not in question but the priority of the spending was her sole concern. She confirmed that this was correct.

15. The Tribunal heard from Ms Jones that her issue is with the choices made by the Respondent. She stated that it was not the Lease it was the right to manage which was her concern, she stated that they were supposed to be a community with a say and that she feels she has not been given any explanation why money has been spent in the way it has and that she wanted an explanation of the what the RTM Company is, and where she stands as regards voting, priority of works, and what her rights are as regards seeing documents. It was for these reasons that Ms Jones considers that no sums are payable in respect of the service charge.
16. She confirmed that it was not the case that she was suggesting that leaseholders had not received the services for which money had been charged through the service charge account or that the sums charged were not of themselves reasonable.

### **DECISION OF THE TRIBUNAL**

17. The Tribunal adjourned to consider the preliminary issue and concluded that in view of the confirmation of position provided by Ms Jones, this application under s27A has no reasonable prospect of success, and the Tribunal does not have jurisdiction to hear the matter as currently expressed by Ms Jones, as the issues raised around liaison with leaseholders and prioritisation of spending do not fall within s19 of the Landlord and Tenant Act 1985 as a matter which we can determine under s27A. We also find that we must strike this matter out under Rule 9(2)(a) as we do not have jurisdiction in relation to the proceedings. We make no findings around the issues of communication, liaison or prioritisation as they are not a matter for us, falling outside of our jurisdiction to determine.
18. Accordingly, we have determined that this matter should be struck out pursuant to Rules 9(2)(a) and 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules (“the Rules”).

### **COSTS – s20C**

19. As part of the original application the Applicant indicated that they wished to make an application under s20C of the Landlord and Tenant Act 1985 that the costs incurred in connection with proceedings before the Tribunal are not to be included in the amount of any service charge payable by the tenant.
20. We have considered whether the order requested is just and equitable in the circumstances. In view of the above determination that the application was without reasonable prospect of success, the Tribunal declines to make such an order.

### **COSTS – Rule 13(a)(b)**

21. The Tribunal was invited by the Respondent’s representative to consider the Respondent’s application for costs pursuant to Rule 13(1)(b) of the Rules in

that A has acted unreasonably in bringing, defending or conducting proceedings in a leasehold case.

## THE LAW

22. The Tribunal's power to award costs derives from Section 29 of the Tribunals, Courts and Enforcement Act 2007. By Section 29(3) the power to determine by whom and to what extent the costs are to be paid, which is conferred by Section 29(2), has effect subject to the Rules.
23. We keep in mind when considering such an application for costs, the content of FTT Rule 3 (overriding objective), and also the relevant procedure and considerations of the Tribunal upon such applications as set out in *Willow Management Company (1985) Ltd v Alexander Sinclair v 231 Sussex Gardens Right to Manage Ltd; Stone v 25 Hogarth Road London SW5 Management Limited* [2016] UKUT 290 (LC).
24. Firstly, the Tribunal must embark on a 3-stage test, as set out at paragraph 28: *"28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be"*
25. Secondly, when deciding whether the conduct complained of is unreasonable, the Tribunal must have in mind the definition provided by Sir Thomas Bingham MR, as he then was, of *Ridehalgh v Horsefield* [1994] Ch 205 at 232C-233F: *"Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable"*
26. The Tribunal's is also mindful that Ms Jones on behalf of the Applicant is a litigant in person. We have carefully considered whether behaviour can be described as unreasonable given that the Applicant is without legal representation. We note that this does not reduce the effect of the above provision to the extent that a party's behaviour is expected to be any more or

less reasonable. Instead, “the behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice” (paragraph 32). At paragraph 34, the Tribunal approached the approach taken in the matter of *Cancino v Secretary of State for the Home Department* [2015] UKFTT 00059 (IAC): 34. “At paragraph 26 of *Cancino* the tribunal considered the balance which is required to be struck when considering application for costs against unrepresented parties: “First, the conduct of litigants in person cannot normally be evaluated by reference to the standards of qualified lawyers. Thus the same standard of reasonableness cannot generally be applied. On the other hand the status of unrepresented litigants cannot be permitted to operate as a *carte blanche* to misuse the process of the tribunal. The appropriate balance must be struck in every case. In conducting this exercise, tribunals will be alert to the distinction between pursuing a doomed appeal in the teeth of legal advice and doing likewise without the benefit thereof... Stated succinctly, every unrepresented litigant must, on the one hand be permitted appropriate latitude. On the other hand, no unrepresented litigant can be permitted to misuse the process of the tribunal. The overarching principle of facts sensitivity looms large once again.” We agree with these observations. We also find support in *Cancino* for our view that rule 13(1)(a) and (b) should both be reserved for the clearest cases and that in every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable.”

## **CONDUCT OF THE APPLICANT**

27. We have considered the conduct of the Applicant in this matter against the tests set out above.
28. Ms Jones informed the Tribunal that she did not consider that she should be responsible for the Respondent's costs and that she did not see why they were incurred. She stated that if the RTM company had straightforward rules she would not have brought the claim and the Respondent would not have had to instruct a barrister. She stated that she did not think the meetings referred to by the Respondent's solicitors in correspondence would happen and that the 'strategy' referred to in respect of the RTM is in her view 'mythical'. She stated that she brought the claim because she wanted clarification and signposting and to get the Respondent to follow the rules of an RTM company. She stated that in her view the costs were excessive given that they say they knew that she had no case and that therefore the size of the costs should be scrutinised by the Tribunal.
29. We accept the representations from the Respondent that the Respondent's solicitors have repeatedly tried to narrow and/or clarify the issues with A. This sequence of events was set out in the Respondent's skeleton argument and was put to the Applicant and was not disputed:
  - a. On 29 September 2022, the Respondent's solicitor wrote to the Applicant:
    - i. Providing copies of the judgments in the preceding McGrath Decision and the Smith Decision, to which the Applicant had already referred in her original application) and setting out that the queries relating to the lack of audit report and charges relating to

the lighting re-fit had previously been found reasonable by the Tribunal and referring the Applicant to the relevant paragraphs of the judgments where the same was considered;

- ii. Setting out that elements of the Application are outside of the FTT's jurisdiction, particularly with respect to the challenge the quality of the meeting reports;
- iii. Flagging that the Applicant had not set out any basis as to why the costs of the security contract had not been "reasonably incurred".

**[526-7]**

- b. The Applicant did not amend her Application (e.g. by withdrawing elements), nor add to her evidence following receipt of this **[545]**;
  - c. On 17 October 2022, R's solicitor wrote to A again, inviting A to withdraw the issues of the quality of the accounts, the cost of the lighting refit and the cost of the insurance premium, and flagged that it would seek costs against A **[547-548]**;
  - d. The Applicant did not amend her Application in response to the same;
  - e. On 24 October 2022 the Respondent's solicitor wrote to A again as follows: *"In summary, you appear to accept the reasonableness of the service charges that are being claimed, large aspects of your application have already been determined by the Tribunal in other cases, and your recent statement of case seeks to impeach the conduct/credibility of my client. Based on your previous submissions to date, I do fear that this application is being pursued for an ulterior purpose unrelated to the subject matter of the litigation and that, but for this ulterior purpose, you would not have commenced proceedings at all. I hope that this is not the case. That is why I remain keen to identify your overall objectives in this matter and your desired outcome. If your primary aim is simply to challenge the priority of spending, this is not something that the Tribunal has any jurisdiction to deal with and you will therefore not achieve this aim via your application. Every RTM company has a discretion when it comes to this and it is not the Tribunal's role to interfere with that discretion. If you do wish to achieve that aim, this is something that can only be achieved via a constructive dialogue with my client. My client would clearly prefer not to incur legal costs opposing applications to the Tribunal..."* **[549]**
  - f. The Applicant did not provide any clarity around the Application, nor seek to amend the same, nor did they dispute the Respondent's solicitor's summary of its case (i.e. that the reasonableness of the service charges was not being challenged).
30. The sequence of conduct is therefore not in dispute, and we are invited by the Respondent to conclude that the Applicant's conduct has been unreasonable in variety of different ways.
31. Firstly they suggest that it was unreasonable because the case was presented in an extremely difficult manner to ascertain the issues. We accept this to have been the case, but by the very nature of an application from a litigant in person we find that it is not inherently unreasonable that the case may be presented in a way which is lacking in clarity or where the pertinent issues may be obscured or not clearly identified. This in our view is not of itself unreasonable.

32. We next considered the suggestion that the Applicant's conduct was unreasonable because multiple issues were pursued which were not relevant to an application under s27A or had already been adjudicated upon. Whilst we have some level of sympathy for a litigant in person in understanding the scope and extent of the Tribunal's jurisdiction under s27A, we are in no doubt that the Applicant was fully aware that these matters had already been determined, at least in part, as the Applicant refers to the previous decisions in her original application. It was never possible for the Tribunal to make a direction as to what the Respondent should be doing, as the Applicant states was the desired outcome of her claim, and therefore this claim was wholly misconceived.
33. We also note, that even if the Applicant was not aware of the scope of s27A, or had misunderstood its extent, or misunderstood the possible outcomes of such an application, the Applicant was given multiple and repeated opportunities to amend her case, and the difficulties of jurisdiction and prospect of success which the Tribunal determined above were explicitly drawn to the Applicant's attention. This could have enabled her to take advice had she been in doubt as to the accuracy of the Respondent's assertions. She declined to do so, and appeared to be fully aware that she was asking the Tribunal for a remedy which is was not open to the Tribunal to provide. We find this course of conduct in the circumstances to be unreasonable.
34. We accept that the Applicant's conduct over the course of several months resulted in the Respondent having no alternative but to pursue a defence of what was ultimately a doomed application. We find the Applicant's assertion that if the Respondent knew her case to be doomed they did not need to incur costs to defend it to be unpersuasive. In our view the Respondent had to prepare to defend the claim as brought, irrespective of its inherent merits, as to not do so would have been negligent. That defence had to include both a preliminary argument on jurisdiction and merits and also a substantive defence in case that argument had not succeeded, and they inevitably incurred legal costs in so doing. In these circumstances we consider that it is appropriate for the Tribunal to make a costs order in favour of the Respondent.
35. We have been presented with a Schedule of Costs by the Respondent and we accept the Applicant's submission that this Schedule should be subject to scrutiny. The Schedule of loss dated 7 February 2023 comes to a total of £10,056 – being £8380 fees plus £1676 VAT. We note that with the exception of work carried out by Counsel, the entirety of the work has been conducted by Mr Warburton who is a grade A fee earner. In our view there was work on this matter which could reasonably have been conducted by a fee earner of a lesser grade than partner level, and therefore at a lower cost. We find the fees incurred by Counsel are appropriate, but that the solicitors' fees are to be reduced by one third to reflect that some but not all of the work was suitable for a lower grade fee-earner under the supervision of a partner.

36. Deducting 1/3 from the fees of Mr Warburton reduces those fees to £4420 plus £884 VAT. Including the £1750 plus Vat of Counsel's fees we order the Applicant to pay the sum of £6170 plus £1234 VAT in costs to the Respondent.