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

**IN THE COUNTY COURT at Salisbury sitting at Havant Justice Centre, Elmleigh Rd, Havant PO9 2AL**

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| **Tribunal reference** | : | **CHI/00HY/LSC/2022/0125** |
| **Court Claim number** | : | **H46Y J538** |
| **Property** | : | **Dunluce House, 28 Woodend Road, Deepcut, Camberley GU16 6QH** |
| **Applicant/Claimant** | : | **Mr Philip Hopkins** |
| **Representative** | : | **In person and in absentia** |
| **Respondent/Defendant** | : | **Mr Christopher Groves** |
| **Representative** | : | **In person** |
| **Tribunal members** | : | **Judge Paul Letman MBE**<br>**Carolyn Barton MRICS** |
| **In the County Court** | : | **Judge Paul Letman MBE** |
| **Date of decision** | : | **19 April 2023** |

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**DECISION**

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Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

## Summary of the decision made by the Tribunal

1. None of the service charges claimed are presently payable by the Respondent.

2. An order is made under section 20C of the Landlord and Tenant Act 1985.

## Summary of the decision made by the County Court

3. The County Court claim is dismissed.

## Procedural background

4. On or about 13 August 2021 the Applicant lessor issued a money claim in the County Court against the Respondent lessee claiming service charges in the sum of £5,772.96 in respect of roof repair and external redecoration works ('the Works') carried out at 28 Woodend Road, Deepcut, Camberley, Surrey ('the Property', also known as Dunluce House), plus alleged losses comprising loan interest in the sum of £397.36, solicitor's fees in the sum of £1,169.50, and Court fees of £455.

5. The issued Claim Form in respect of the said claims was not received in time by the Respondent (he moved address to married quarters in June 2021) and default judgment was entered against him for the total amount of the claim in the sum of £7,794.82. Upon being notified of the said judgment (by a CCJ credit alert) the Respondent applied to the County Court at Salisbury to set the judgment aside.

6. By order dated 21 June 2022 of Deputy District Judge Payne the default judgment was set aside on terms requiring the Respondent by 5 July 2022 both to pay directly to the Applicant the sum of £4,095 and to file and serve a Defence to the claim. The Respondent having complied with these terms, by order dated 16 September 2022 District Judge Bloom-Davis ordered that all matters falling with the jurisdiction of the Tribunal should be transferred to it for determination. Further, the same order provided that a Tribunal Judge sitting as a District Judge (under section 5(2)(t) and (u) of the County Courts Act 1984 as amended) should also determine all and any remaining proceedings including any claims for costs and interest.

7. Directions were duly issued by the Tribunal and the matter came on for hearing in person at Havant on Monday 6 March 2023. On that occasion and as foreshadowed in emails received by the Tribunal, the Applicant did not appear and was not represented. The Respondent attended in person, together with his wife, and made submissions and gave evidence before the Tribunal. With regard to the absence of the Applicant, the Tribunal was of the view, with which the Respondent concurred, that it would be in both parties' best interests and fair and just if the Tribunal were to hear the matters within its jurisdiction in absence of the Applicant. The Tribunal directed accordingly and this is its substantive decision.

## The Property and the background to the dispute

8. There was no inspection, but the Tribunal have been able to view the exterior of the Property on the internet. It is a substantial detached property comprising three

floors in what appears to be a residential area. Once presumably a single home, the Property is now divided into flats. Two of the flats are owned by the Applicant. The Respondent is the owner of one flat, Flat 2, in the Property.

9. The lease of Flat 2 ('the Lease') is dated 10 September 1984 and is for a term of ninety-nine years from 01 January of that year. So far as is presently material, the Tenant's share of the total expenditure incurred by the Lessor in maintaining and repairing the Property is one sixth. Under the terms of the Lease the Lessor covenants amongst other things to maintain and keep in good and substantial repair and condition the main structure of the Building including the roof and to paint the whole of the outside wood iron and other work of the Building (see clause 5(5)(a) and (b)).

10. Further, under the Fifth Schedule of the Lease, provision is made for a Service Charge to be paid, firstly by way of equal an Interim Charge payable in advance on the 24 June and 25 December in each year and then, following service of a signed certificate setting out, amongst other things, the amount of Total Expenditure for that Accounting Period, by way of a balancing payment or credit (to be carried forward) as the case may be.

11. The relevant clauses of the leases and their detailed terms are referred to as necessary below.

**The Tribunal's Jurisdiction**

12. Under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") the Tribunal may determine all aspects of liability to pay service charges and to this end may also interpret the lease where necessary to resolve any matters in dispute. The Tribunal can decide by whom, to whom, how much and when a service charge is payable.

13. By section 19 of the 1985 Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

14. Under section 20C of the 1985 Act a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

**Other Relevant Statutory Provisions**

15. In relation to the service charge issues in this matter (see below) within the Tribunal's jurisdiction, the following key statutory provisions are to be noted:

(1) The statutory consultation requirements under section 20 of the 1985 Act and the regulations made pursuant thereto, namely the Service Charges (Consultation Requirements) (England) Regulations 2003 and specifically Part 2 of Schedule 4 thereto (Consultation requirements for qualifying works for which public notice is not required). These provisions limit recovery to £250 unless the said consultation requirements have been followed or dispensation has been granted.

(2) Section 20ZA of the 1985 Act pursuant to which an application may be made to the First-tier Tribunal (FTT) for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works and the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements. The Supreme Court decision in *Daejan Investments Ltd v Benson* [2013] UKSC 54 refers; in accordance with which the tribunal is effectively directed to consider the prejudice accruing to the tenants by reason of the failure to consult and to grant dispensation on terms reflecting that prejudice by way of a reduction in the amount claimed.

(3) Section 20B of the 1985 Act entitled 'Limitation of service charges: time limit for making demands, which provides, amongst other things, that if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. Subsection (2) making provision for written notice to be given to the tenant with the 18 months to preserve the landlord's entitlement.

(4) Section 21B of the 1985 Act entitled 'Notice to accompany demands for service charges', pursuant to which a demand for service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, the failure to do so entitling a tenant to withhold payment until a proper demand is made. The form of the required notice being prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, SI 2007/1257.

(5) Sections 47 and 48 of the Landlord and Tenant Act 1987. The first of which requires that any demand must contain the name and address of the landlord, the second of which requires the landlord by notice to furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant. In each case the amount demanded to be treated for all purposes as not due from the tenant unless and until the relevant information or notice as appropriate has been provided (see the decision in *Beitov* v *Elliston* [2012] UKUT 133 (LC) confirming that any liability to pay is suspended until compliance with both sections).

**The Issues**

16. The principal matters in issue appear from the Respondent's Position Statement before the Tribunal (as well as from his Defence in the County Court). Primarily, the Respondent challenges the recovery by the Applicant of any sum greater than £250 (see paragraph 12(2) above) in respect of the Works because of the failure by the Applicant to comply with any of the requirements of the statutory consultation procedure (see Appendix A hereto enclosing a copy of the prescribed form Explanatory Notes outlining the said procedures).

17. The Respondent also queries the figures demanded, saying that despite requests from him to the Applicant for transparency this has not been forthcoming. In particular he has queried the increase in costs over and above the quotation from Northwood Roofing Contractors in the sum of £24,570. It is on the basis of that

quotation that he is willing to pay, as he confirmed to the tribunal, the sum of £4,065 (one sixth of the former figure) already ordered and paid to the Applicant.

18. Further, and raised at the hearing before the Tribunal, the Respondent complains that none of the demands raised by the Applicant in respect of the Works were accompanied by the required Summary of Rights and Obligations and nor has the Applicant by way of the demands or otherwise complied with either of sections 47 or 48 of the 1987 Act.

**The Applicant's Case**

19. By his Position Statement of 27 November 2022 and further statement dated 22 February 2023 (in response to the Respondent's dated 02 December 2022) the Applicant makes no attempt to argue compliance with the statutory consultation procedures.

20. As regard the estimates and invoices, as referred to in the Heald Nickinson letter of 19 January 2021, these were as follows:

Roofing quotations obtained by the Applicant,

(a) Northwood Roofing Contractors dated 3 March 2019 in the sum of £24,570 plus VAT.
(b) Fleet Roofing & Scaffolding Ltd dated 16 January 2020 in the sum of £27,400.80 inclusive plus £930 inclusive for leadwork repairs to 2 no. dormers and soil stacks.
(c) Barnes Roofing dated 05 March 2020, repeating the Fleet quotation above.
(d) MMB Brothers Ltd dated 12 March 2020, in the sum of £35,780.00 inclusive of VAT.

External joinery repairs and redecorations quotations,

(a) High Quality Joinery & Aluminium Services dated 8 September 2019 in the sum of £4,900 plus VAT.
(b) Neil Gilfillan dated 26 September 2019 in the sum of £3,950 (exclusive of VAT).

21. As explained in the said solicitor's letter, in the event the Applicant engaged Roofstiles, a successor company of Fleet Roofing & Scaffolding Ltd (and Barnes Roofing Ltd). Northwood were not chosen because they apparently demanded an uplift in their quotation of 10% because of Brexit related price increases (theirs was in any event the higher of the two tenders). Mr Gilfillan was engaged to carry out the joinery repairs and redecoration.

22. Further thereto the Applicant incurred the sum of £28,990.80 in respect of the roofing works, including extra chimney leadwork in the sum of £660 (as appears from Roofstiles final invoice dated 14 October 2020). As for the external joinery repairs and redecorations, it is the Applicant's case that the sum of £5,647 was incurred with Mr Gilfillan and a Mrs Alison Brook who it is said works with him, although no explanation is provided for the increase in these costs, beyond provision of the invoices and bank statements evidencing payment of this sum.

23. The total of the incurred costs above in the sum of £34,637.80 was the basis for

the claim for Interim Charges on 25 December 2019 and 24 June 2020 in the total sum of £5,772.96 (as claimed in the County Court Claim Form). Although it is not apparent that any demands were actually issued other than by way of a letter dated 4 August 2020 from the Applicant to the Respondent requesting immediate payment in the sum of £5,834.

**The Respondent's Case**

24. As indicated above the Respondent's case is that the Applicant has failed to comply with the statutory consultation provisions under the 1985 Act, has failed to issue any valid demands complying with section 21B and has as yet failed to comply with sections 47 and 48 of the 1987 Act so as none of the sums claimed are due.

**Determination**

25. It is plain to the Tribunal that the Respondent's case is correct. The Applicant, presumably unaware of the relevant statutory provisions that govern the recovery of residential service charges, failed to comply with the statutory consultation procedures, has failed to issue any compliant demands and has failed to comply with sections 47 and 48 of the 1987 Act. Accordingly, it is undoubtedly the case that none of the costs of works claimed by way of service charges herein were due at the commencement of these proceedings and equally that remains the position now.

26. Furthermore, it is notable also that the Applicant has generally made no attempt to operate or comply with the service charge provisions of the Lease. Whilst no point was pursued by the Respondent for present purposes in this regard (it did not need to be given the obvious failings above), it is no less important that in future the terms of the Lease are followed as well, including proper demands for Interim Charges in advance, certification and any balancing demand made or credit applied.

27. Nonetheless, on the pragmatic basis that it might yet be possible for the Applicant to correct some or all of these matters by issuing compliant demands and seeking dispensation in reliance on the competitive tenders referred to above, but without the Tribunal deciding these matters, the Respondent confirmed that he was not seeking repayment of the sum of £4,095 and indeed has made no claim or counterclaim (in the County Court proceedings) in this regard.

28. In the particular circumstances of this case, the multiple grounds upon which the Respondent's case succeeds and in the absence of the Applicant, the Tribunal takes the view that it is neither desirable nor necessary for any decision as to the reasonableness of the costs of these works to be made and accordingly makes no further determination in relation thereto. Save that is to say that the costs reasonably incurred are highly unlikely to be less than the exclusive amount quoted by Northwood in the sum £24,570.

**Application under section 20C of the Act**

29. In deciding whether to make an order under section 20C of the 1985 Act, that the costs of proceedings may not be recovered as service charges, a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings.

30. The Tribunal determines that, because of its decision that no service charges are presently recoverable, it is just and equitable for an order to be made that to such extent as they may be recoverable under the Lease or otherwise, the Applicant's costs in connection with the Tribunal proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any future service charge payable by the Respondent.

31. That concludes the Tribunal's consideration of the case.

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**The County Court Issues**

32. In the light of the decision of the Tribunal made above, the claims for consequential loss and damage comprising interest on money borrowed due to alleged non-payment by the Respondent of monies due and for solicitors' fees in pursuing the same are unsustainable. No monies were or are due and owing.

33. The County Court claim is accordingly dismissed.

34. In these circumstances, the Court further directs as follows:

(1) If any application for costs (in the County Court) or for any other order is to made, it should be made in writing to the Court (sitting at Havant) within 7 days of receipt of this Decision.

(2) Any application for costs should be accompanied by a Statement of Costs (in or following as closely as possible form N260) setting out the costs claimed, which form must be signed by the party or the party's representative.

(3) The respondent to any such application shall within 7 days of receipt of the application file and serve any written submissions in response, both as to the principle and basis of any order for costs and in respect of any amount/s claimed.

(4) The Court will then proceed to determine any application and if and in so far as necessary assess the costs.

**See the Annex below as to Rights of Appeal**

## 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 office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional 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 a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court*

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 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 xx office within 21 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 decisions of the Judge in his/her capacity as a Judge of the County Court*

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