



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

**IN THE COUNTY COURT at  
Wandsworth sitting at 10 Alfred  
Place, London WC1E 7LR**

**Tribunal reference** : **LON/00AW/LSC/2022/0267**

**Court claim number** : **Ho6YY816**

**Property** : **Flat 2, 20 Gledhow Gardens,  
London SW5 0AZ**

**Applicant/Claimant** : **Cadogan Estates Limited**

**Representative** : **PDC Law**

**Respondent/  
Defendant** : **Lupo Fabiani Colonna Di Cesaro**

**Representative** : **N/A**

**Tribunal member** : **Judge Tagliavini**

**In the county court** : **Judge Tagliavini**

**Date of decision** : **31 August 2023**

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**DECISION**

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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) No arrears of service charges or reserve fund are due from the respondent as these were paid in full as of 3 June 2023.
- (2) The administration charges of £636 are not reasonable and are not payable by the respondent.

### **Summary of the decisions made by the Court**

- (1) The court issue fee of £569.96 and the costs of issue of £100 are not payable by the defendant.

### **The proceedings**

1. Proceedings were originally issued against the respondent on 6 September 2021 in the County Court under claim number HO6YY816 after a Claim Form dated 15 August 2021 was received by the County Court Money Claims Centre on 23 August 2021. The applicant sought payment of the sum of £11,399.20 made up of £8,663.20 service charges/reserve fund charges, £636.00 of administration fees (legal costs) and £2,100 in respect of accrued contractual costs. In addition the applicant claimed the £596.96 court fee and £100 legal representative's costs for the issue of the claim and further contractual costs.
2. The respondent filed a Defence dated 3 February 2022 in which he admitted the sum of £1,475.20 as being payable. The proceedings, having previously been allocated to the Fast Track by an order dated 25 March 2022, were then transferred to this tribunal by the order of Deputy District Judge Mohabir dated 1 September 2022 which stated:

Send to First Tier Tribunal (Property Chamber) to be dealt with under the deployment scheme.

3. Directions were issued and the matter eventually came to hearing on 31 August 2023 on the documents only, as neither party requested an oral determination.

### **The background**

4. The subject property is a second floor flat of which the respondent holds a long lease dated 20 December 1993 for a term from 25 December 1992 to 20 December 2060.

5. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary as the only issue that remained in dispute between the parties was the liability to pay administration charges and costs.
6. The respondent's long lease of the subject property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge and the payment of contractual costs. The specific provisions of the lease will be referred to below, where appropriate.

### **The original issues**

7. The sums claimed by the applicant were as follows:
  - (i) A service charge/reserve fund arrears of £8,663.20
  - (ii) A late payment administration fees of £636.00
  - (iii) Legal costs of £2,100 to the date of issue.

### **The remaining issue for the tribunal**

8. It was accepted by the parties the respondent had paid the sum of £9,166.96 (£9,147.00) and the issue remaining was identified as:

*The defendant claims that outstanding service charges arrears sum was paid before the claim was issued by the claimant, and therefore is not liable for the claimant's costs and administration charges. The claimant's position is that it did not identify the payment when received from the defendant because the payment was not referenced with the correct payment details relating to the defendant's service charge account when it was later allocated by the claimant applied against the defendant's outstanding arrears.*

*(Email to the tribunal from the applicant/claimant dated 1 October 2022)*

9. Therefore, the only issue for the tribunal to determine is whether the respondent is liable to pay any sums claimed that had accrued in respect of administration charges of £636.00 and contractual costs in the sum of £2,100.

### **The remaining issue for the county court**

10. Whether the cost of the claim issue in the sum of £569.96 and the solicitor's costs of issuing of £100 are payable by the defendant.

### **The hearing**

11. The tribunal was provided with a hearing bundle comprising 179 electronic pages on which the parties relied.

### **The applicant's case**

12. In a Statement of Case dated 23 June 2023 the applicant asserted the sum of £9,147.00 was retrieved by its agent RMG London of RMG House from the agent's bank account having received it under the reference '*F/FLOW AMORITA ANS*' and allocated to the respondent's service charge account on 4 January 2022. The applicant asserted the said payment reference did not correspond with the payment details as set out in the demands served on the respondent. As a consequence of the payment not being referenced correctly, the applicant was entitled to commence proceedings for the sum still believed to be outstanding from the respondent. The applicant also asserted the respondent had failed to query the demands for payment after 2 June 2021 although he knew he had paid the sums due.
13. In its Statement of Case, the applicant also asserted that administration costs of £636 were payable by the respondent as well as contractual costs of £2,100 under clause 4.12.1 of the lease.

### **The respondent's case**

14. As well as the Defence, the respondent also relied upon a Statement of Case in Response to the Applicant's Case. The sum of £9,196.66 was said by the respondent to have been paid on 2 June 2021 as evidence by a bank statement showing this sum had been transferred by way of an international bank transfer to the applicant using the bank details provided and quoting payment reference 900501100402.
15. A pre-action Letter of Claim dated 3 June 2021 demanded the sum of £9,299.20 in relation to Reserve Fund, Service Charge and Service Charge Deficit including an administration charge of £442.00. The respondent asserted that all sums demanded as of 18 May 2021 were paid and therefore by the date of the issue of the claim in the county court, the sums of arrears of service charge/reserve fund were not due and the administration charges and contractual costs were not reasonable.

### **County court issues**

16. The tribunal having been asked by the county court to determine the whole of the claim, the only issue that remained for determination was the payment of the court fee of £569.96 and the fee for issuing the claim of £100.

### **Decisions and reasons**

17. The tribunal finds the sums of arrears of service charge/reserve fund were paid in full by the respondent as of 3 June 2021.
18. The tribunal finds that on 2 June 2021 the sum of £9,196.66 was sent by the respondent to the applicant's agent RMG London at RMG House at its account at the Bank of Scotland with the payment reference: 900501100402, by way of an international bank transfer from the respondent's bank. The tribunal finds the applicant received this sum on 3 June 2021 of which £9,147.00 was recorded as paid as shown on the RMG House Bank of Scotland statement.
19. The tribunal does not accept the applicant's assertion the payment of £9,147.00 was incorrectly referenced and therefore got 'lost' in its system. The tribunal finds the payment was correctly referenced by the applicant's bank and sent to the correct payee as instructed in the Final Request for payment of 18 May 2021. In the absence of any statement from the applicant's agent, the tribunal finds the applicant's agent failed to allocate the sum correctly or make any reasonable enquiries as to which account the sum was to be allocated and simply kept it in its own account until it was queried by the parties.
20. The tribunal finds that at both the date the proceedings were sent to be issued on 15 August 2021 and as issued on 6 September 2021 the sums claimed for Service Charges/Reserve Fund by the applicant were no longer due from the respondent.

### **Administration costs**

21. The respondent does not dispute administration charges are payable under the terms of the lease but asserts they are unreasonable as they were levied on or after 2 June 2021 being the same date he had sent the bank transfer of £9,169.96 and therefore were not reasonable. Further, the administration charges have variously been stated as £442.00 in a pre-action Letter of Claim and £636.00 as submitted in the Statement dated 24 May 2023 and it is unclear how the sums have been calculated.

### **The tribunal's decision and reasons**

22. The tribunal finds the administration charges of £636.00 and contractual costs of £2,100 are not payable by the respondent.

23. The tribunal finds the applicant has failed to explain when and how the administration charges were incurred. Although, Statements of the Service Charges were provided by the applicant, the tribunal finds these are not, without further explanation a reliable source of evidence. In particular, the tribunal finds the applicant included a court fee of £100 on 15/07/2021 on the respondent's service charge account, although this sum had not been incurred as at that date. Further, the applicant has not provided any explanation as to why administration costs were said on 2 June 2022 to be £422.00 but are now claimed in the sum of £636.00.
24. Further, the tribunal finds an administration fee of £160.00 and a legal fee of £432.00 were both added to the respondent's service charge account on 02/06/2021 and a reminder fee of £34.00 added on 18/05/2021, on which date the balance said to be owed by the respondent was £9,220.20 of which the respondent paid £9,147.00 as of 3 June 2021. The tribunal finds these discrepancies are unexplained by the applicant and render the statements unreliable.
25. The tribunal finds it regrettable the respondent did not provide an alternative address to the applicant, whether by post or email while absent from the UK for an extended period in order to ensure all communications from the applicant were received promptly. Further, the tribunal finds that even when the respondent received letters from the applicant, he failed to respond or query them promptly, even if he believed the applicant had made a mistake in its demands and that he failed to chase up receipt and allocation of his payment of £9,166.96 although there was no requirement for him to do so.
26. The tribunal finds the contractual costs of £2,100 have not been explained adequately or at all by the applicant. The tribunal would reasonably expect the applicant to have liaised with its agent as to any payments received from the respondent before issuing its claim over two months after the respondent had made payment.

**County court matters - decided by Judge Tagliavini sitting as a deputy district judge of the county court**

27. The claim for the court fee of £569.96 and the issue fee of £100.00 are dismissed.

**Reasons**

28. The tribunal finds that as at the date of issue of the claim the sums were either not payable by or had been paid by the respondent and therefore the claim was bound to fail. Further, the court finds the applicant sought to add these charges to the defendant's account on 15 August 2023 and before they had been incurred.

**Name:** Judge Tagliavini

**Date:** 31 August 2023

### **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.