



**In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY) sitting at 10 Alfred Place,
WC1E 7LR**

Tribunal Case reference : LON/00AH/LSC/2023/0148
LON/00BA/LSC/2023/0180
LON/00BA/LSC/2023/0060

Property : 16,59 & 60 Fountain House, Sadler
Close, CR4 3EG

Applicant : Clarion Housing Association

Respondent : Rachel Hickey (60)
Mr Lionel & Mrs Violeta Lerini (59)
Mr Michael Anthony Wills (16)

Type of application : Transfer from County Court

Tribunal : Deputy Regional Judge Martyński
Mrs A Flynn MA MRICS

Date of hearing : 8 September 2023

Present at hearing : Mr Mold (Counsel for the Applicant)
Mrs Lerini
Mr Wills

Date of decision : 12 September 2023

DECISION

Decision summary

1. The renewed application made orally at the hearing for an adjournment of the hearing is refused.
2. The Applicant's case is struck out pursuant to Rule 9(3)(a) Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
3. The tribunal finds that none of the Service Charges claimed by the Applicant are payable by the Respondents.
4. The Applicant is to pay to Mr Wills the sum of £74.00 by 30 September 2023.

Background

5. The Applicant issued proceedings against the Respondents in three separate claims in the County Court on the 15 June 2022, making claims for Service Charges in the following sums:

Flat 60: £6124.24

Flat 59: £5820.21

Flat 16: £5640.70

The Claim Forms give little detail regarding the make-up of the charges.

6. All the Respondents (save for Mr Lerini – who has not lived at Flat 59 for some years) filed defences. The defences were similar in nature.
7. Mrs Lerini stated that the charges related to a major works invoice dating from April 2016. She disputed the quality of the works and stated that there had been numerous discussions regarding the works and the charges for them. She also challenged the technical validity of the invoice for the works (failure to comply with s.47 Landlord and Tenant Act 1987 and failure to follow statutory consultation).
8. Ms Hickey filed a defence similarly disputing the charges and referring to defective work.
9. Mr Wills disputed the claim but simply referred to an earlier tribunal regarding major works finding in his favour and needing time to gather evidence.
10. The following orders were made transferring the cases to the tribunal:
Flat 60: Order dated 28 March 2023
Flat 59: Order made 4 May 2023
Flat 16: Order made 6 December 2022
11. Because the cases were transferred at different times, the tribunal issued directions on each individual case at different times as follows:
Flat 60: 19 April 2023
Flat 59: 17 May 2023
Flat 16: 23 June 2023
12. It was only on 23 June 2023 that the tribunal realised that the proceedings were linked. On that day, directions were sent in respect of Flat 16 and the previous directions that had been issued for the other flats were amended, but only to the extent of the hearing date. By 23 June, all the cases had

been given the same hearing date (5 September, later changed to 8 September 2023). The tribunal made it clear that all the cases involved similar or the same issues and that all would be dealt with at the same hearing.

13. The directions on all cases were in a similar form. They all provided, as a first step, for the Applicant to file a Statement of Case in response to the defence and to provide documents setting out a breakdown of the charges claimed. The deadline dates for this step were:

Flat 60: 26 May 2023

Flat 59: 23 June 2023

Flat 16: 7 July 2023

14. Provision was made in the directions for the Respondents to reply to the Applicant's Statement of Case. The directions further provided that the Applicant was to file a bundle of documents for the hearing by 1 September.
15. The directions sent out to the parties included supplementary directions including the following:

If the applicant fails to comply with these directions the tribunal\ court may strike out all or part of their case pursuant to Rule 9 (3) (a) of the Tribunal Procedure (First-tier Tribunal) Property Chamber rules 2013.

16. The Applicant failed to comply with any of the directions.
17. On 6 September 2023, the tribunal received a letter in the following terms from the Applicant's solicitors:

Having spoken to Ms Hickey on behalf of the three sets of Respondents yesterday it has been agreed between the parties that due to Ms Hickey's ill health the three matters listed for hearing will be adjourned and stayed for 6 weeks in the hope that Ms Hickey's health improves during this period.

The period will be used by the parties to actively look at actively exploring a resolution to these cases.

All parties are copied into this email by way of consent.

Could you please place this email before the Judge as soon as possible as the hearing is listed on Friday 8th September.

We would ask that an order is made that the parties report back to the Tribunal after 6 weeks whether any further directions and/or a hearing is required.

18. On the same day, the tribunal responded as follows:

The 'agreement' between the parties to vacate the hearing set for this coming Friday has been considered by Judge Martynski who has commented as follows.

This is wholly unacceptable.

The parties are not at liberty to agree to vacate the hearing or to stay the proceedings. If the email from the Applicant's solicitors dated 6 September is an application to vacate the hearing, it is refused.

These matters have been ongoing for some time. I gave very specific directions to ensure that the matter would be resolved this month.

Tribunal resources (by way of reservation of a hearing room and the booking of tribunal members for the hearing) have already been expended. These cases have now had their full allocation of tribunal resources.

The case will be heard on Friday and will be resolved on that day, regardless of whether the parties are ready or have complied with directions.

The Applicant is expected to provide the tribunal and the other parties with a bundle of documents for the hearing (which, according to the directions, should have already been done).

19. During this time, Ms Hickey had stated that she was unable to attend the hearing set for 8 September for health reasons. There was however no medical evidence which supported her assertion that she was too unwell to attend a hearing.
20. It appears that the Applicant sent a bundle of documents, electronically, to the Respondents in the mid-afternoon of 7 September, the day before the hearing.
21. Mr Mold, Counsel for the Applicant, stated that the bundle had been sent electronically to the tribunal at the same time as it was sent to the Respondents. A search was made of the tribunal inboxes on the morning of the hearing but no bundle was found. Mr Mold stated that the email sent to the tribunal containing the bundle indicated that a bundle would also be hand delivered to the tribunal. No such bundle was available at the hearing.

The issues and the parties' submissions at the hearing

Adjournment

22. Mr Mold, on behalf of the Applicant, renewed the Applicant's application for an adjournment. He referred to the overriding objective and stated that the sums in dispute were not insignificant; works have taken place and the Respondents have had some benefit from those works, and that only some aspects of the works were disputed. It was therefore important that there be a determination on the merits.
23. Mr Mold referred to the history of the dispute and said that it had been long-running and at times rather confused, and that some of this was not the fault of the Applicant. He stated that Ms Hickey had initiated proceedings in this tribunal in 2016 challenging the costs in respect of the major works. Those proceedings were set down for a final hearing and the tribunal undertook a site visit on the first day of the hearing. The parties then negotiated and the case was stayed and listed for a case management conference on 14 November 2017. At some stage it was agreed that Ms

Hickey would withdraw her application. Ms Hickey withdrew her application on the basis that the Applicant promised that if the matter remained unresolved, it would not raise any objection if Ms Hickey issued fresh proceedings.

24. Mr Mold added that the Respondents did have all the figures for the disputed works and so were able to set out their cases in detail.
25. Further, the Applicant has now made a Statement of Case (that Statement of Case is undated and it is not clear when it was made - it appears however that it was only sent out the day before the hearing on the 7 September).
26. Finally, Mr Mold stated that Ms Hickey was the lead leaseholder in the dispute and she was not well enough to attend, and that in itself should be a good reason for the hearing to be adjourned. If the matter were to be adjourned, further directions could be given and those directions could include an order debarring the Applicant in default.
27. In response, Mr Wills referred to the court proceeding he was involved in as an example of the Applicant's behaviour. He stated that there had been a hearing in the county court on 6 of December 2022. At that hearing the Applicant's representative seemed to know very little about the case and as a result the court made an order that the Applicant send to the court and to himself, further particulars of the claim showing how it was made-up and attaching any copies of invoices, and the Applicant was to do this by the 20th of December 2022. Mr Wills said this was not done and the next thing he heard was that the matter had been transferred to the tribunal. He added that in December of 2022 whilst the case was in the county court, the parties were offered mediation, he accepted the offer but the Applicant refused. He added that he wanted to bring an end to the long running matter once and for all and opposed any application for an adjournment. Mrs Lerini concurred with Mr Will's position.
28. The application for an adjournment was refused by the tribunal and our decision was given to the parties orally at the hearing. The reasons for reaching this decision are as follows:
 - (a) The dispute between the parties had been ongoing since 2016. The dispute involved not only negotiations between the parties and litigation between the parties, but also additional works carried out at the building. It was clear that this long running saga had taken its toll on Ms Hickey in terms of stress and inconvenience. There was therefore a pressing need for resolution, even if that resolution ultimately denied the parties a full determination on the merits of the case.
 - (b) The tribunal's resources are finite. The tribunal and the hearing room had been booked for the hearing in advance, by the time of the Applicant's request for an adjournment, the tribunal could not be cancelled without the payment of a fee to one of its members. Adjourning the hearing would therefore represent a waste of tribunal resources, time and money.

- (c) In any event, by the time of the hearing, the proceedings had already used a considerable amount of tribunal resources by way of case management, not to mention the court resources, some of which, as Mr Wills described above, were wasted at the hearing on 6 December 2022.
- (d) There was no explanation for the Applicant's total failure to comply with the tribunal's directions.

Striking out

- 29. At the hearing the tribunal informed the parties that, following its refusal to adjourn the hearing, it was left in the position of having no papers by way of a trial bundle. The Respondents had the trial bundle, but had received it less than 24 hours before the start of the hearing. Because of the Applicant's failure to comply with the directions, the Respondents had not had a chance to submit further details of their cases as per the directions, because those directions allowed for the Applicant to submit its response to the defences and then for the Respondents to reply to the Applicant's response.
- 30. The tribunal informed the parties that it was considering striking out the Applicant's case on the basis that it had failed to comply with the directions. Counsel for the Applicant was given the opportunity to make submissions in respect of this.
- 31. Mr Mold stated that there had been numerous attempts to settle the matter over the course of the years by the Applicants. The Statement of Case that was to be provided by the Applicant "slipped through the net". He stated that there was a bundle available and again referred to the overriding objective. If the Denton principles were applicable (they were not directly relevant given that no sanction had yet been applied), then although the Applicant had no good reason for its failure to comply with directions and that the failure was serious, the case required a determination on its merits and that was a good reason for not striking out.
- 32. The tribunal decided to strike out the Applicant's case for the following reasons:-
 - (a) There had been a wholesale failure to comply with directions and there was no good reason for that failure
 - (b) The failure to follow the directions was of the utmost seriousness
 - (c) Given such a fundamental and serious breach on the part of the Applicant, the striking out of its claim was proportionate.
 - (d) The Applicant had put the tribunal and the Respondents in an impossible position. At the hearing the tribunal was not able to consider the Applicant's claim in any detail given the absence of a bundle, even if it were able to do this, that would have left the

Respondents in the position of not having had the opportunity to properly consider that bundle and respond to it prior to the hearing.

Reasonableness and payability of Service Charges

33. Following the tribunal's decision to strike out the Applicant's case, the tribunal made the inevitable decision that the Applicant was unable to substantiate its own case or answer the case set out in the defences of Ms Hickey and Mrs Lerini, accordingly we make a finding that none of the service charges in dispute in the county court proceedings are reasonable or payable by the Respondents

Costs

34. Mr Wills had travelled to the hearing from his home in the Isle of Wight incurring travel costs of £74 and he asked that the tribunal make an order reimbursing these costs.
35. After hearing Mr Mold's representations opposing this application, the tribunal decides to make an order pursuant to Rule 13(1)(b) of the tribunal rules on the basis that the Applicant had acted unreasonably in the conduct of these proceedings for the reasons given above. An order should be made in respect of costs, especially given the limited nature of those costs. The order should be for the full amount claimed. Accordingly the tribunal makes an order that the Applicant pays Mr Wills the sum of £74 by no later than **30 September 2023**.

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).