



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

Case Reference : **CHI/00MR/LSC/2023/0041**

Property : Flat 1 St Helens Mansions
1-2 St Helens Parade
Southsea
PO4 0RU

Applicant : St Helens Mansion Limited

Representative : Mr M Moody
Mr M Amin

Respondent : Garry Swain

Representative :

Type of Application : Determination of Service Charges
Section 27A of the Landlord and Tenant
Act 1985

Tribunal Member(s) : Regional Judge D Whitney
Mr P Smith FRICS

Date of Hearing : 3 October 2023

Date of Decision : 17 October 2023

Decision

Background

1. The Applicant seeks a determination that the Respondent is liable to pay the sum of £1,436 in service charges in respect of costs for a section 20ZA application and a previous service charge deficit plus reimbursement of the Tribunal application fee.
2. On 26 June 2023 the Tribunal directed the application to be dealt with on the papers and the Applicant to send to the Tribunal and the Respondent the timeline and attachments referred to in the Application by 3 July 2023. The Applicant failed to do this by the said date.
3. On 26 June 2023 the Respondent emailed the Tribunal to state that this matter had been before Portsmouth County Court, and had been dismissed because the Applicant had not attended the hearing.
4. The evidence pack now produced by the Applicant states that at page 3 “In 2019 the company involved the debt recovery agency to recover from Mr. Swain the shortfall in the service charges 2017 & 2018. A day before the hearing on 14 Jan 2020 Mr. Swain paid his debt and so the company decided not to re-apply for judgment”.
5. The evidence pack goes on to say “In 2020, Mr. Swain still owed the company sums the following sums;
 1. £681 (his share of 20ZA) – This is because in 2018 the company undertook major works through S20 process which costed £6,813.04 more than the initial estimate. The company successfully applied for 20ZA and the tribunal ruled that each shareholder pays 1/10 of the total cost. In our view, to this day, Mr. Swain is in breach of that ruling.
 2. £620.67 (his share of 2017 deficit) – Following the tribunal in 2018, the judge ruled [GS3] that some of the service charges for 2017 & 2018 had to be credited to shareholders. Each shareholder, including Mr. Swain received a credit for 1/10 th of £26,010.90). This resulted in 2017 accounts ending up in deficit by Together with the deficit from previous year, this resulted in 2017 accounts being in deficit by £26,010.90”
6. Further directions were issued including 6TH September 2023 listing the matter for a hearing.

Hearing

7. The hearing took place at Havant Justice Centre on 3rd October 2023. Mr Amin and Mr Moody represented the Applicant. The Respondent appeared in person.
8. The hearing was recorded.
9. The Applicants had been directed to provide a bundle. The bundle supplied was in two parts called A and B. It did not contain all of

the documents as required by the directions or the Tribunal Guidance. Notably it did not contain the Respondents statement of case and evidence.

10. References to the bundle will be said to be either bundle A or B and to pdf pages within the relevant bundle. The Tribunal had a copy of the Respondent's statement separately.
11. The Tribunal reminded the parties that within the directions it had provided that the matter would be struck out if a proper bundle was not supplied. The Tribunal confirmed on this occasion it would not strike out the application but would determine the same.
12. The Tribunal identified and it was agreed by Mr Swain that three main issues were to be determined:
 - Had proper demands been made?
 - How had the Applicant made Mr Swain aware that demands were to be made so as to satisfy section 20B of the Landlord and Tenant Act 1985 ?
 - Had the previous court proceedings determined these issues meaning the Tribunal lacked jurisdiction to determine the sums?
13. Mr Amin and Mr Moody made the case for the Applicant's. They were afforded a 15 minute adjournment to allow them to consider further the papers to ensure they could satisfy the Tribunal on the points raised.
14. Mr Amin relied upon the demand dated 03.01.2020 B[9] for the total sum of £1,436.01. He explained whilst this referred to being for the period 01/01.2018 to 31/12/2018 it was not raised until January 2020. The sum claimed was said to be:

*“Accounts deficit 2017
Administration Costs 7,547.10
Recharging for deficit in accounts
Section 20 6,813.04
Section 20 ZA
Total - Accounts deficit 2017 14,360.14

Your contribution 1,436.01
1 invoice of 718.01
and 1 Half Yearly invoices of 718.00”*
15. The Applicants stated that this sum was not billed until this point as the Applicant was trying to deal with other matters arising from earlier Tribunal proceedings. Mr Amin stated that the previous proceedings were for service charges for the years 2017 and 2018 but excluding these amounts.

16. The Applicants did not have a copy of the accounts within their documentation to show how the sums had been made up. At A[11] was an email which appeared to show a copy of the accounts was emailed to the Respondent on 6th November 2018. They also relied on an email from the then managing agent to the then debt collection solicitors dated 15th August 2019 A[18 and 19] supposedly showing how sums were calculated.
17. Further A[38 and 39] were said to show that Mr Swain acknowledged and accepted he owed the various monies.
18. Mr Amin was adamant all leaseholders were fully consulted as to works. As a result everyone knew of the need to pay for all works.
19. Mr Amin stated that they did not have copies of the court proceedings previously taken against Mr Swain but relied on various emails within the bundle between PDC Law (the debt collection solicitors) and Cosgrove's (the managing agents). It was submitted these demonstrated that the sums claimed did not include these figures.
20. On questioning by the Tribunal they did not know why the statement of account relied on B[13-17] did not include the demand of 3rd January 2020 but included at 1st January 2018 the two sums referred to on the demand totalling £1,436.01. Further they did not understand why Ms Cosgrove in an email to PDC Law A[23] referred to the demand having been sent in December 2018.
21. Mr Swain repeated his statement of case: essentially that he believed the previous court proceedings finally determined in January 2020 determined any amounts due from him in 2018.

Decision

22. We dismiss the Applicant's application.
23. All parties are agreed that in or about 2019 debt recovery proceedings were taken against the Respondent by the Applicant. Mr Amin stated these were for the period 2017 and 2018. He suggested that the sums currently before the Tribunal were not included. Mr Swain states he was told by making the payments in January 2020 he owed no further monies for this period. Both parties agree Mr Swain made payments in January 2020 and the court made no further order. It appears likely the claim was dismissed.
24. Mr Swain has been clear throughout that he believes the previous court proceedings determined his liability for all service charges owed up to the end of December 2018. The Applicant has not provided copies of the court proceedings which should make clear

what was claimed. Looking at the email from Cosgrove's A[23] this suggests the demand was sent in December 2018. The statement of account relied upon by the Applicant suggests the sums were charged in January 2018 and not January 2020.

25. The position is far from clear but we remind ourselves it is for the Applicant to satisfy ourselves as to the sums claimed. Mr Swain has been consistent in his defence. On balance taking account of the oral submissions and the totality of the two bundles provided by the Applicants we find that the earlier Court proceedings did include all sums due and owing for service charge year 2018. It was on that basis that Mr Swain made a payment and the proceedings were ended.
26. As a result of that finding we determined we do not retain any jurisdiction to determine amounts previously adjudicated upon.
27. We also find that we have no details upon which in any event we could determine the reasonableness of the amounts claimed. There are no accounts or invoices to explain how the sums claimed are reached.
28. Again these have been at issue from the outset. If we are wrong on the jurisdiction point on the basis of the evidence before us we would have found that none of the sums claimed were reasonable or payable.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.