



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

Case reference : **LON/00AT/LSC/2021/0080**

HMCTS Code : **V: CVPREMOTE**

Property : **3 Grove Road, Brentford, Middlesex
TW8 9NT**

Applicant : **Mr Ajay Kumar Anand**

Representative : **KLPA & Company**

Respondents : **Ms Diana Justine Tommons (Flat 1)
Mr Ian Justin Spicer Smith (Flat 2)
Mr Vatroslav Vlahovic (Flat 3)
Mr Marin John Carr (Flat 4)**

Representative : **Setfords Solicitors (John Summers)**

Type of application : **Section 27A Landlord and Tenant Act
1985 – liability to pay service charges**

Tribunal : **Judge Robert Latham**

**Date and Venue of
Hearing** : **2 December 2021 at
10 Alfred Place, London, WC1E 7LR**

Date of Determination : **13 December 2021**

DECISION ON PRELIMINARY ISSUE

1. The Tribunal strikes out this application pursuant to Rule 9 of the 14 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”).
2. The Tribunal has issued Directions in respect of the Respondents application for costs pursuant to Rule 13(1)(b) of the Tribunal Rules.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal has had regard to the documents specified in paragraph 4.

Introduction

1. On 11 January 2021, Mr Ajay Kumar Amand (“the Applicant”) issued this application in which he seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the Act”) as the service charges payable for the calendar years 2009 to 2020 in respect of 3 Grove Road, Brentford, Middlesex TW8 9NT (“the Property”). The Applicant is the freeholder and landlord. The Property has been converted into four flats:
 - (i) Flat 1: A two bedroom flat on the lower and upper ground floors. Ms Diana Justine Tommons has been the lessee since 15 November 2007. Her lease is dated 27 March 1986.
 - (ii) Flat 2: A one bedroom flat on the lower and upper ground floors. Mr Ian Justin Spicer Smith has been the lessee since 31 October 2001. His lease is dated 14 April 1984.
 - (iii) Flat 3: A one bedroom flat on the first floor and roof space extension. Mr Vatroslav Vlahovic has been the lessee since 5 April 2016. His lease is dated 5 April 2016 and was granted as a result of a lease extension.
 - (iv) Flat 4: A two bedroom flat on the first floor and roof space extension. Mr Marin John Carr is the lessee.
2. On 18 August 2021, the Respondents applied to strike out this application on the grounds that the tribunal has no jurisdiction to determine the same. The Respondents argue that the Applicant is asking this tribunal to revisit issues which have been determined in the County Court and that it is an abuse of the process of this Tribunal to seek to do so. The Respondents have also applied for costs pursuant to Rule 13(1)(b) of the Tribunal Rules on the ground that the Applicant has acted unreasonably in bringing these proceedings.
3. On 10 September 2021, the tribunal gave directions for the determination of this application. These were amended on 6 October.
4. On 7 October 2021, the Respondents filed the following in support of their application:
 - (i) Bundle of Documents filed by Respondent (625 pages) – references to which will be prefixed by “p. ___”).

(ii) First Witness Statement of John Summers, the Respondent's Solicitor, dated 6 October 2021. There are 6 pages of exhibits – references to which will be prefixed by "JMS1._").

(iii) Second Witness Statement of John Summers, dated 24 November 2021. There are 66 pages of exhibits – references to which will be prefixed by "JMS2._").

(iv) A Skeleton Argument from Miss Elizabeth England, Counsel for the Respondents. She has also provided a number of authorities.

(v) Four legal authorities.

5. The Applicant has filed no material in response to this application.

The Hearing

6. The Applicant did not attend the hearing. The Tribunal is satisfied that he made an informed decision not to do so. The Directions made on both 10 September and 6 October specified the hearing date. The tribunal emailed these to the Applicant on 13 September and 7 October. On 30 November, the tribunal emailed the joining instructions to the parties.

7. The Respondents were represented by Miss Elizabeth England (Counsel) who was instructed by Setfords Solicitors. Her instructing Solicitor, John Summers, also joined the hearing. Miss England provided a Skeleton Argument.

The County Court Proceedings

8. In April 2019, the Applicant issued proceedings in the County Court Business Centre against three of the tenants:

(i) Flat 1: On 8 April 2019, the Applicant issued proceedings against Ms Tommons (F6QZ27M7) claiming arrears of service charges of £7,448.48 and ground rent of £600 (at p.71). The Defence is at p.73 and Reply at p.77.

(ii) Flat 2: On 8 April 2019, KLPA issued proceedings against Mr Smith (F5QZ83M3) claiming arrears of service charges of £5,537.36 and ground rent of £712.50 (at p.103). The Defence is at p.104 and Reply at p.108.

(i) Flat 3: On 8 April 2019, KLPA issued proceedings against Mr Vlahovic (F5QZ87M5) claiming arrears of service charges of £6,905.44 and ground rent of £525 (at p.13). The Defence is at p.134 and Reply at p.137.

9. The proceedings were transferred to the Brentford County Court. On 6 September 2019, DJ Chohan ordered that the proceedings be consolidated and allocated to the small claims court. The Applicant served Statements of

Account in support of his claims. The Statement for Mr Vlahovic is at p.218-223. It is apparent that the claims are for the calendar years 2009 to 2018.

10. On 18 December 2019, the actions were listed for trial before DDJ Tear. Miss England appeared for the Respondents. The Applicant was present at the hearing. He was assisted by his father, Mr Kamlesh Anand. The Judge dismissed all the claims. The Order is at p.345. The Judge ordered the Applicant to pay costs of £258.
11. Miss England filed a Skeleton Argument which summarised her submissions (at p.44). She raised three arguments:
 - (i) The service charge demands did not satisfy either sections 47 or 48 of the Landlord and Tenant Act 1987, therefore liability to pay the service charges had not arisen.
 - (ii) The certification of the accounts was not satisfied in accordance with Fifth Schedule of the Lease at paragraph 2 therefore liability to pay the service charges had not arisen.
 - (iii) The administration of the service charge accounts was so poor that it was not clear what was owed, and therefore the claimants had not discharged their burden of proving the sums owed.
12. The Judge gave judgment at the hearing. An approved transcript of her judgment is at p.346-350. The Judge accepted Miss England's submissions on these three points. The Judge also found that the tenants had made out cheques and had tendered payments which had not been credited to their service charge accounts. The Judge accepted their defences of tender.
13. The Judge refused permission to appeal. The Applicant did not renew his application to a Circuit Judge. The Applicant has not paid the costs.

The Application to this Tribunal

14. On 11 January 2021 (at p.1), the Applicant issued his current application to this Tribunal. The application is issued against the four Applicants. The claim relates to the service charges payable for the calendar years 2009 to 2020.
15. A statement of truth is signed by the Applicant. In Section 8 of the application form, the Applicant was required to specify whether he is aware of any other cases involving (a) related or similar issues about the management of the property or (b) the same landlord or tenant or property, as in the current application. The Applicant stated "no". This was manifestly untrue.
16. The Applicant gives KLPA and Company ("KLPA") as his representative. The precise status of KLPA is unclear. A service charge demand, dated 20 December 2020 (at p.444) has a footer which reads: "as from 1 January 2020 KLPA & Company is not the trading name of PL Estate Ltd".

However, the papers suggest that KLPA is a trading name used by Mr Ajay Kumar Anand (the “Applicant”) and Mr Kamlesh Kumar Anand (“Kamlesh Anand”), his father. The Applicant provides an email address for his representative, namely klpa@live.co.uk. This is the email address for the service of any documents in these proceedings.

17. On 11 August 2021, Judge Donegan gave Directions. He set this down for hearing on 20 and 21 January 2022. On 12 August, the tribunal emailed these to the parties.
18. On 18 August 2021 (at p.33), Mr Summers, of Setfords Solicitors, notified the tribunal that he had been instructed on behalf of the four Respondents. He gave his email address as jsummers@setfordds.co.uk. Mr Summers requested a preliminary hearing as to whether this tribunal had jurisdiction to determine the issues which had been determined in the County Court. Particulars of the County Court proceedings were provided. He complained that the Applicant had written to the Respondents’ mortgagees demanding the payments of service charges which the County Court had found not to be payable (see JMS1.3-6).
19. Rule 14 of the Tribunal Rules permits a party to appoint a representative. The Respondents have complied with this Rule by notifying both the Tribunal and the Applicant of their representative. Thereafter, the Applicant should have served any documents on the Respondent’s representative by email (at jsummers@setfordds.co.uk) and by post to Setfords London, 46 Chancery Lane, London WC2A 1JE marked for the attention of Mr Summers.
20. By 8 September 2021, the Applicant had been directed to send to the Respondents by post and email copies of all relevant service charge accounts and estimates for the years 2009 to 2020 inclusive, together with all demands for payment and details of any payments made. The Applicant has failed to comply with this Direction. On 18 August, he notified both Ms Tommons and the tribunal that he refused to accept Mr Summers as her representative (at JMS2.14)
21. On 8 September 2021, The Applicant emailed a number of documents in 12 separate emails to some or all of the Respondents. It is unclear whether these were sent by post. He also emailed these to the tribunal.
22. On 10 September 2021, Judge Hawkes gave Directions for the determination of the Respondents’ application for a preliminary hearing. She vacated the hearing date fixed for 20 and 21 January 2022. She noted the mandatory nature of Rule 14(4) of the Tribunal Rules. She directed the Applicant to provide Setfords with any document which he had been required to send to the Respondents. He failed to comply with this Direction.
23. On 6 October, Judge Martinski amended the Directions, requiring the Respondents to obtain a copy of the transcript of the judgment of DDJ Tear.

24. Pursuant to the Directions, on 7 October (at JMS2.30), Mr Summers sent to the Applicant and the tribunal the material upon which the Respondents sought to rely in support of their application. The Tribunal is satisfied that Mr Summers emailed this Bundle to the Applicant at both klpa@live.co.uk and kamleshchand@live.co.uk (the personal email address that the Applicant had provided in his application form). On 12 October (at JMS2.35), the Applicant complained that he had received the Bundle. The Tribunal is satisfied that it had been sent to him. On 29 October, the Respondent also couriered a set of the papers to the Applicant at 41 Highfield Road, Acton, London W3 0AH (see JMS2.48). The Applicant accepts that he received these, as on 29 October he complained that these had been received late (see JMS2.53).
25. By 5 November, the Applicant was directed to email to the Respondents and the tribunal his Bundle in response to the application. The Applicant has failed to serve any bundle in response to the application.
26. The Applicant has sent a large number of emails to the tribunal. This is not acceptable. The tribunal issues Directions setting out how any application will be determined. Any party must comply with such Directions. The “Overriding Objective” in Rule 3 of the Tribunal Rules require the parties to cooperate to enable proceedings to be determined fairly and justly. The Applicant has failed to do so.
27. Mr Summers has filed his Second Witness Statement, dated 24 November 2021. He complains that the Applicant still refuses to communicate with him. Rather than use his personal email, the Applicant sends any correspondence to the Setfords’ general email address. He exhibits the large quantity of correspondence which the Applicant has generated in this case.
28. On 30 November 2021, the tribunal emailed the joining instructions to the parties. These were sent to Raj and Co, whom the Case Officer understood was acting for the Applicant. Whilst the Applicant has made reference to Raj & Co in his correspondence, this Tribunal is satisfied that Raj & Co have not been formally notified as the Applicant’s representative. Mr Summers confirmed that he had emailed the joining instructions to the Applicant.
29. At the beginning of the hearing, Judge Latham satisfied himself that the Applicant was aware of the hearing and had made an informed decision not to attend.

The Application to Strike Out the proceedings

30. Rule 9 of the Tribunal Rules provide (emphasis added):

“(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.”

31. In *Virgin Atlantic Airways v Zodiac Seats UK Ltd* [2013] UKSC 46; [2014] AC 160 at [17] to [27], Lord Sumption JSC explained the principles of the modern law of res judicata. The Supreme Court held that the purpose of the principle of res judicata was to support the good administration of justice in the interests of the public and the parties by preventing abusive and duplicative litigation. The principle operated, in the form of cause of action estoppel, to prevent a cause of action being raised in subsequent proceedings which was identical to that raised in earlier proceedings between the same parties so that points which could, with reasonable diligence, have been taken in earlier proceedings but had not been could not be raised subsequently. Cause of action estoppel is absolute only in relation to points actually decided on the earlier occasion and is sufficiently flexible not to preclude the raising of essential points which had not been decided in the earlier proceedings.

32. Ms England referred to the ore recent decision of Mr Robert Wyand QC, sitting as a Deputy High Court Judge, in *Eli Lilly and Company v Greentech Inc* [2020] EWHC 261 (Pat), in which he summarised the relevant principles at [49]:

“49. Issue estoppel will only arise where:

- a. An issue has been determined in a final decision in an earlier action between the same parties;
- b. The issue determined in the earlier action must be fundamental to the earlier decision; and,
- c. The issue in the later action is the same as was finally determined in the earlier action.”

33. Ms England also referred the Tribunal to the decisions of the Court of Appeal in *Barrow v Bankside* [1996] 1 WLR 257 and the judgment of Sir Thomas Bingham (at p.260A-D) and *Allsop v Banner Jones Ltd* [2021] EWCA 7 and the judgment of Smith J (at [27] to [43]).

34. The Tribunal is satisfied that the current application is an abuse of process in that the Applicant is seeking to litigate against Ms Tommons, Mr Smith and Mr Vlahovic exactly the same issues in respect of the service charge years 2009 to 2018 as were dismissed in the County Court. These were dismissed after a one day trial. The Applicant participated in these proceedings, assisted by his father. In Section 8 of his application to this tribunal, the Applicant made no reference to these proceedings. The statement that he was unaware of these previous proceedings was a lie. The Applicant must have known that this was a lie. The tribunal therefore strikes out these aspects of the current application as an abuse of process pursuant to Rule 9(3)(d).

35. There are two further issues that the Tribunal must determine. First. There is the claim against Mr Carr in respect of the years 2009 to 2018. Mr Carr was not a party in the County Court proceedings. However, the Tribunal accepts Miss England’s argument that the Applicant is seeking to advance exactly the same case against Mr Carr as was advanced against the three other tenants in the County Court and was dismissed by DDJ Tear. The Applicant has advanced no argument as to why the case against Mr Carr has any greater prospect of success than that advanced against the other three tenants. The Tribunal is therefore satisfied that the case against Mr Carr in respect of the service charge years 2009 to 2018 has no reasonable prospect of success and strikes this out pursuant to Rule 9(3)(e).

36. Secondly, DDJ Tear did not determine the payability and the reasonableness of the service charges payable for 2019 and 2020. However, the Applicant has disclosed the service charge demands and the service charge accounts upon which he relies in support of his current application. We accept Miss England’s argument that the claims for the service charges for 2019 and 2020 are bound to fail for the same reasons that DDJ Tear found that they were not payable:

- (i) The service charge demands do not satisfy the statutory requirements of section 48 of the Landlord and Tenant Act 1987, therefore liability to pay the service charges had not arisen. She refers to the documents at p.510 (dated 31 December 2019); p.512 (dated 28 December 2019); p.518 (dated 31 December 2020), and p.520 (dated 20 December 201),

(ii) The certification of the accounts was not in accordance with Fifth Schedule of the Lease at paragraph 2 therefore liability to pay the service charges had not arisen. Miss England referred the Tribunal to the documents at p.509, 517 and p.521. It is apparent that Mr Kamlesh Kumar, the Applicant's father, is continuing to certify the accounts albeit that he is not entitled to do so within section 28 of the Act as he is no longer a member of the Chartered Institute of Management Accountants (see p.192). Whilst he was admitted on 12 August 1985 (see p.193), he has allowed his membership to lapse.

37. Miss England has sought to argue that these two new matters are an abuse of process as they are a collateral attack upon the judgment of DDJ Tear. The Tribunal rather prefers the formulation that that these new claims have no reasonable prospect of success. The Applicant has not sought to appeal the decision of DDJ Tear. Neither has he sought to argue why these additional claims should have any reasonable prospect of success in the light of the decision in the County Court.

38. Mr Summers brought to my attention the Applicant's email to the Tribunal, dated 18 November 2021 (at JMS2.55), in which he suggests that the County Court proceedings were dismissed as they had been brought by KLPA and the Judge had found that the managing agents had no authority to bring the actions. This was not the basis upon which the proceedings had been dismissed.

Conclusions

39. The manner in which the Applicant has conducted this application is not acceptable. Any party must have regard to the Overriding Objective in the Tribunal Rules. It is manifestly unreasonable to relitigate matters which have been decided against him in the County Court. He has provided no explanation for his reason for so doing, or for failing to mention these proceedings when he submitted his application. He has failed to comply with the Directions issued by this Tribunal.

40. The Applicant states that managing agents manage the property on his behalf. However, it seems that KLPA is no more than a trading name used by the Applicant and his father.

41. The Applicant must recognise that service charges are only payable if demanded in accordance with the terms of the lease and comply with the statutory requirements which have been enacted to protect lessees from paying excessive service charges.

42. It is apparent from the extensive papers in this case that the Applicant has had access to legal advice. It would seem that he has not heeded this. It would be in his interests to place the management of this property in the hands of professional managing agents. The Tribunal suspects that this would also be welcomed by the lessees, who would be willing to pay any service charges which are lawfully payable and are reasonable.

Judge Robert Latham

13 December 2021

RIGHTS OF APPEAL

1. 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.
2. 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.
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 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.