



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
COUNTY COURT AT WILLESDEN
SITTING AT 10 ALFRED PLACE, WC1E
7LR**

Case reference
Claim No : **LON/00AQ/LSC/2019/2095**
E23YY020

HMCTS code : **V: CVPREMOTE**

Property : **10 West Hill Hall, West Hill, Harrow on**
Hill, HA2 0JQ

Applicant : **10 West Hill Hall Management**
Company

Representative : **Mr Jonathan Wragg, counsel**

Respondent : **Galina Ann Ursula Makhon**

Representative : **N/A**

Type of application : **Liability to pay service charges and/or**
administration charges

Tribunal member : **Judge Tagliavini**
Ms S Phillips MRICS

Date of hearing. : **24 June 2021**

Date of decision : **15 July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper hearing which has been consented to by the parties. The form of remote hearing was V:VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the tribunal was referred are contained in the applicant's bundle, pages 1 to 303 and supplementary bundle of pages 1 to 11.

The tribunal's summary decision

- (1) The tribunal is satisfied that the respondent is liable to pay and that the sums demanded by the applicant are reasonable, arrears of service charges, reserve fund and administration fees in the sum of £20,0334.80.

Judge Tagliavini's summary decision on ground rent and costs sitting as a judge of the county court

- (2) The court orders the defendant to pay to the claimant costs in the sum of £14,176.94 and the court fee of £1,170.34.

The application

1. The County Court proceedings were originally issued in the Northampton County Court Centre under Claim with Particulars of Claim dated 10 November 2018 seeking arrears of service charges, reserve fund and ground rent arrears in the sum of £19,794.80, administration costs in the sum of £772,.00 and the court fee of £1,070.34 and legal representative's costs of £100 in addition to contractual costs. The whole of the claim was subsequently transferred to the tribunal by an order of District Judge Ahmed dated 25 July 2019.
2. All First-tier Tribunal ("FTT") judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.
3. Accordingly, the parties were informed in the tribunal's directions dated 1 October 2019 that all the issues in the County Court proceedings would be decided by a combination of the FTT and the Tribunal Judge of the FTT sitting as a Judge of the County Court. Accordingly, Judge Tagliavini presided over both parts of the hearing, which has resolved all matters before both the tribunal and the County Court.

4. Therefore, this decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The applicant's case

5. In support of its claim the applicant provided the tribunal with a comprehensive bundle of documents and schedules detailing the arrears accrued under the various heads of service charges, reserve fund payments ground rent and contractual costs with no interest being sought. These were subsequently itemised as:
 - (i) Service charges including the reserve fund: £17,494.80
 - (ii) Administration charges: £270
 - (iii) Ground rent: £2,300
 - (iv) Contractual costs: £14,176.94 (including VAT)
6. The tribunal was referred to the relevant clauses in the tripartite lease dated 5th July 1999 made between Tebb Properties Limited and Ashwan Ghai and West Hill Hall Management Company which grant a lease of the subject premises at 10 West Hill Hall , West Hill, Harrow on the Hill, HA2 0JQ for a term of 125 years from and including 29th September 1989.
7. At the final hearing the applicant relied upon a witness statement dated 18 December 2020 of Mr Daniel Payne, Regional Property Manager at Warwick Estates Property Management appointed by the applicant to administer demands for service charges, reserve fund demands and ground rent. Mr Payne drew the tribunal's attention to the relevant clauses in the lease which made provision for the payment of service charges and ground rent, administration fees and costs. Exhibited to this witness statement were the service charge budgets, demands (with statements of tenant's rights) and actual accounts covering the period 1 April 2012 to 24 March 2019 in addition to the letter of claim pursuant to the pre-action protocol for debt claims dated 10 August 2018.
8. The applicant accepted that the lease did not make express reference to the collection of a reserve fund but submitted that the respondent was now 'estopped' from denying that such sums were due (even though she had not previously raised them in this application/claim) as these sums had historically been demanded by the applicant and previously paid by the respondent. Consequently, the principle of 'estoppel by convention' applied and the respondent is liable to pay the arrears of reserve fund claimed; *Dixon and another v Blindley Heath Investments Ltd* [2015] EWCA Civ 1023

Costs

9. The applicant also provided an updated schedule of costs as of 24 June 2021 seeking costs on an indemnity basis in the sum of £14,176.94 (including VAT); *Freeholders of 69 Marina, St Leonnards-on-Sea v Oram* 2011] EWCA Civ 1258 .The applicant referred Judge Tagliavini to the provisions in the lease that provided for the recovery of costs and the letters sent to the respondent prior to the commencement of the claim setting out the possibility of the forfeiture of the lease. Mr Wragg submitted that he costs sought were contractually payable and reasonable and proportionate in amount having been reasonably incurred.

The respondent's case

10. Although the respondent had initially defended the claim and made a counterclaim seeking initially over £100K although seemingly reduced to around £44,000 by the respondent, the latter was struck out by District Judge Arnold on 25 June 2019 and not re-instated, thereby leaving the tribunal able to consider the issue as a matter of 'set-off' only. Subsequently, the respondent was barred from any further participation in this claim/application save as to raising any legal argument in a direction of the tribunal dated 20 November 2020 due to her non-compliance with the tribunal's previous directions.
11. The respondent did not appear at the final hearing of this application/claim and was not represented. Further, the respondent did not provide the tribunal with any documentation either at all or on which she was permitted to rely.

The tribunal's decision and reasons

12. The tribunal is satisfied that the respondent is liable to pay the sums of service charges, reserve fund and administration fees as demanded by the applicant in the sum of £17,764.80. The tribunal is also satisfied, that in the absence of any evidence to the contrary and having regard to the budgets and accounts produced by the applicant, that these sums are reasonable and are payable under the terms of the lease and in respect of the reserve fund, by reason of 'estoppel by convention.'

Decisions of Judge Tagliavini sitting as a judge of the county court

13. The arrears of ground rent are due and payable by the respondent in the sum of £2,300.
14. Contractual costs are payable under the terms of the lease and have been properly incurred by the claimant/applicant in bringing and pursuing this claim for arrears of sums payable under the terms of the respondent's lease. Therefore, in a summary assessment of costs, the court awards the applicant

indemnity costs sought in the sum sought of £14,176.94 and the court fee of £1,170.34.

Name: Judge Tagliavini

Date: 15 July 2021

Rights of appeal from the decision of the tribunal

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).

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal. Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court and in respect of the decisions made by the FTT. You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

In the County Court at Willesden and sitting at 10 Alfred Place	
Claim No:	E23YY020
Date:	15 July 2021

General Form of Judgment or Order

BEFORE Tribunal Judge Tagliavini sitting as a Judge of the County Court (District Judge)

UPON:

- (a) The County Court having transferred to the First-tier Tribunal the matters within the Tribunal's jurisdiction
- (b) The Tribunal Judge (sitting as a Judge of the County Court) having exercised County Court jurisdiction on any matters falling outside the Tribunal's jurisdiction

AND UPON hearing Mr Jonathan Wragg for the claimant and the defendant not appearing and not being represented

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

- (1) Judgement is entered for the claimant in the sum of £20,064.80 for arrears of service charge, reserve fund and ground rent.
- (2) The defendant is to pay the claimant's costs in the sum of £14,176.94 and the court fee of £1,170.34.

Dated: 15 July 2021