



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

Case references : **LON/00AE/LSC/2021/0086**

County Court Claim Number : **G14YY181**

HMCTS code : **V: CVPREMOTE**

Properties : **61a High Street, London NW10 4NJ**

Applicant/Claimant : **Zinc Real Estates Limited**

Representative : **Mr Wesley Griffith, counsel**

Respondent/Defendant : **John Paraskeva**

Representative : **I/P**

Type of application : **Transfer from county court – service charges**

Tribunal members : **Judge Tagliavini
Mrs S Phillips MRICS**

Date of hearing. : **16 July 2021**

Date of decision : **12 August 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 applicants (electronic) bundle pp 1 to 138.

The tribunal's summary decision

- 1. The total sum payable by the respondent for arrears of service charges is £7,719.05**

The decision of Judge Tagliavini sitting as a judge of the county court

- 2. Judgement for the applicant in respect of interest and costs in the sum of £6,308.76**
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The application

1. This is a claim for arrears of service charges and transferred from the county court by an order of District Judge Griffith dated 17 December 2020 which stated *'Transfer to First-tier Tribunal (Property Chamber)*. ' The tribunal is now required to determine the reasonableness and payability of the service charges under the provisions of the Landlord and Tenant Act 1985. Further, the tribunal sitting alone as a judge of the county court will determine matters of interest and costs.

The premises

1. The building in which the subject premises are situated, comprise commercial premises on the ground floor with two residential premises above. The applicant/claimant is the freehold owner of the building, having acquired the freehold interest on 3 September 2019. Since 15 July 2005, the respondent/defendant is the long leaseholder of the first floor flat under a lease dated 10 May 1995 made between Dr Ahmed Zaman and Mohammed Rafique Goheer for a term of 99 years with effect from 24 June 1983.

The issues

2. The applicant sought the payment of £5,970.75 representing 50% of the total cost of major work totalling £11,841.50, together with service charges for 2016, 2017, 2018 and 2019 in the sum of £2,074.05 and insurance premium for 2020 in the sum of £400, ground rent for 2020 in the sum of £150, legal costs of £600 and further interest and costs.
3. The respondent previously admitted and paid the applicant 50% of the total costs of the major works and a county court judgment was entered with that effect. The respondent has admitted the sums claimed for annual service charges, insurance, and ground rent in the total sum of £2642.50. Therefore, the only issue for the tribunal to determine was the reasonableness and payability of the cost of the remaining 50% cost of the major works claimed in the remaining sum of £5,970.75.

The applicant's case

4. The tribunal was provided with a Statement of Case dated 27 May 2021 and a witness statement of Mr Rehan Zaman a director of the freehold company and dated 10 June 2021. In the applicant's written and oral evidence, Mr Zaman told the tribunal that the freeholder's predecessor in title Zaman Trustee Corporation Limited, had carried out urgent building and refurbishment works to the exterior render and decoration. Mr Zaman also stated that as a director of the predecessor of the freehold tile he had organised and had carried out these works that form the subject matter in dispute. Under Clause 3(i) of the lease the respondent is required to pay one third of the cost of these works.
5. The building and refurbishment works were required because of the poor and dangerous condition of the external render, with the local authority (Brent) threatening to take enforcement action under the provisions of the Town and Country Planning Act 1990 after render had fallen off and a cordon placed around the area, to protect passers-by and users of the commercial and residential properties. Mr Zaman also told the tribunal that the enforcement notice that had been subsequently served by the local authority dated 5 December 2018 was subsequently withdrawn as it had been served erroneously.
6. Mr Zaman told the tribunal that the respondent was contacted on behalf of the then freeholder to discuss the required works, as he believed that the respondent might wish to have them carried out himself. However, the works required were eventually carried out by the landlord. An inspection of the building was carried out by Black Cat Consultancy on 24 August 2018 and a report produced. Subsequently an estimate for the works was produced by Bradford Watts Limited Building Contractors and Refurbishes, dated 31 August 2018, comprising both removal of the existing rendering and re-rendering were quoted as £28,220.00 (including VAT)

7. In a demand for payment dated 3 October 2019, the charges demanded were set out as:

1/3 of:

- | | |
|--|-----------------------|
| (i) Bradford Watts Building Contractors and Refurbishers | £1,200.00 & £25,020.0 |
| (ii) Black Cat Building Consultancy | £1,698.00 & £2,022.00 |
| (iii) Recovery of service expenses (BBS Law Ltd.) | £1,380.00 |

50% of:

- | | |
|------------------|-----------|
| (iv) Legal costs | £3,003.00 |
|------------------|-----------|

Total representing the respondent's share: £11,941.50

8. Mr Zaman told the tribunal that the applicant believed the respondent had agreed to the works and therefore did not make an application to the tribunal for dispensation from consultation. In any event, the applicant now sought dispensation from the tribunal, if required.
9. The tribunal was also provided with a Judgment in Default dated 16 January 2020 in which the respondent was ordered to pay £6,072.68 (representing 50% of the total sum above of £11,941.50 plus interest) and £558 for costs.

The respondent's case

10. The respondent asserted that (i) the applicant failed to provide two quotes for the works; (ii) the applicant failed to allow at least thirty days for the consultation process; (iii) failed to have proper regard to the respondent's alternative nominated contractors; (iv) the applicant failed to apply to the tribunal for dispensation from the consultation procedures under section 20ZA of the Landlord and Tenant Act 1985.
11. In his written (witness statement dated 10 June 2021) and oral evidence to the tribunal, the respondent told the tribunal he had purchased the flat as a 'buy to let' investment and had never lived in the subject premises. The respondent disputed the urgency of the works as they had not been carried out until September 2018 although the poor state of the render had been brought to the applicant's attention in April 2018.

12. The respondent stated he had obtained an alternative quote dated 31 August 2018, for the works from Glen G Master Building Service in the sum of £24,350.00, although it did not include the cost of re-rendering once the defective render had been removed as the extent of the re-rendering required could only have been ascertained at that time. The respondent asserted that he had been prejudiced by the lack of consultation as if more time had been provided '*it was entirely possible that after a more diligent investigation process a different, less expensive and more effective methodology could have been found.*'
13. The respondent asserted that the works were poorly executed and relied upon the enforcement notice dated 5 December 2018 issued by the London Borough of Brent, alleging that the works had been poorly done and adversely affected the amenity of the Harlesden Conservation Area and required painting of the external walls in brick red paint and the decorative features in white paint as well as the removal of all satellite dishes, wires and fixings attached to the exterior of the building. The respondent also relied on a number of photographs showing the exterior of the building said to have been taken in 2021.

The tribunal's decision and reasons

14. As Judgement in Default has been entered in respect of 50% of the total sum of the works, the tribunal is able only to consider the reasonableness and payability of the remaining 50% only. Although, the applicant referred to a quotation of works from Bradford Watts dated 31 August 2018 and referred to in a letter to the respondent dated 6 September 2018, this was not included in the applicant's documents. The applicant also failed to provide the tribunal with a copy of any post works inspection by Black Consultancy and the invoices paid to Black Cat Consultants, Bradford Watts or BBS Law.
15. Notwithstanding these omissions, the tribunal is satisfied that the works carried out were both urgent and necessary as detailed in the report of Black Cat Consultancy dated 24 August 2018. The tribunal is satisfied that the works were carried out in accordance with this report by Bradford Watts and that on the balance of probabilities, the subsequent enforcement notice dated 5 December 2018, was withdrawn. The tribunal finds that the photographs relied upon by the respondent taken in 2021, are not sufficient to demonstrate the alleged poor standard of works carried out in 2018, although they do appear to show that further re-rendering works may be required. Therefore, the tribunal finds that works are reasonable in standard and cost and are payable by the respondent in his stated contribution.
16. The tribunal does not accept that the respondent's quote for works obtained from Glen G. Master Building Service is sufficient to demonstrate it is a sufficient comparable, as it omits a significant element of the cost of re-rendering. However, the tribunal does not accept that it was reasonable for the applicant to have delayed carrying out these works required under clause

8 of the lease, in the hope that the respondent would take on the responsibility for them as the obligation to carry out these works is clearly on the landlord.

17. The tribunal accepts that the works were sufficiently urgent for the applicant not to have followed all the section 20 consultation procedures. However, the tribunal finds that the majority of the consultation requirements were followed, and that the respondent was aware of the works required, their cost and was provided with an opportunity to obtain an alternative which was duly considered by Black Cat Consultancy. The tribunal does not accept that the respondent agreed to the works in the manner claimed by the respondent. However, the tribunal finds that the respondent did not suffer any or any significant prejudice by the applicant's failure to carry out all the consultation requirements and the tribunal considers it appropriate to grant the dispensation sought under section 20ZA by the applicant.
18. In the absence of invoices to support the claim for payment, the tribunal finds that the costs claimed by the applicant should be adjusted to reflect this absence of proof and the lack of explanation of legal costs, or why the respondent is required to 50% of these as opposed to the 1/3 share specified in the lease. Therefore, having regard to the Judgement in Default for 50% of the total costs of these works of repair and refurbishment.

Sums allowed in bold:

Black Cat Consultancy (£1,698.00): £424.50 allowed

Black Cat Consultancy (2,022.00): £505.00 disallowed – no evidence to support)

Bradford Watts (£1,200.00): £300 disallowed – no evidence to support)

Bradford Watts £25,020.00): £4,170.00 allowed

Legal expenses in respect of BBS law consultation process (one third of sum not paid): £500.50

Recovery of service expenses of £1,380.00: £345.00 disallowed - no evidence or lease clause to support)

Total payable: £5,095.00 in respect of contested works

Admitted sum payable: £2,624.05

Grand total payable: £7,719.05

19. The respondent made a request for costs of the application not to be added to the service charges. However, the tribunal finds that the applicant has been

largely successful in its claim and should be entitled to its costs as provided by clause 5(iv) of the lease. Therefore, the tribunal refuses the application under section 20C of the Landlord and Tenant Act 1985.

The decision of Judge Tagliavini sitting as a judge of the county court on interest and costs

20. In light of the respondent's partial successful defence and partial admission of sums owed interest of 4% as provided in clause 9(d) of the lease on the judgement sum of £7,719.05 is awarded providing a sum of £308.76. The applicant submitted a Statement of Costs for summary assessment in the sum of £7,120.00 and submitted that the costs claimed are reasonable '*as the respondent was the maker of his own misfortune.*' The applicant asserted that it is entitled to contractual costs under clause 5(iv) of the lease as these proceedings should be regarded as being incidental to a potential claim for forfeiture.
21. However, the costs claimed are disproportionate to the amount of judgement and costs in the sum of £6,000 are awarded.
22. Judgement for the applicant in respect of interest and costs in the sum of £6,308.76

Name: Judge Tagliavini

Date: 12 August 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 sitting at 10 Alfred Place	
Claim No:	G14YY181
Date:	___ August 2021

Zinc Real Estates Limited	1st Claimant Ref
	2nd Claimant Ref
John Paraskeva	1st Defendant Ref
	2nd Defendant Ref

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 from Mr Griffiths of counsel and the defendant in person

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 applicant in the sum of £14,027.81 (for service charge arrears, interest and costs of £6,000).

Dated: 12 August 2021