IN THE COUNTY COURT AT CANTERBURY

AND IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Tribunal case ref.	**:**	CHI/24UH/LSC/2024/0010
County Court case no.	**:**	H07YY914
Property	**:**	34b Aigburth Drive, Sefton Park Liverpool, Merseyside, L17 4JE
Claimant/Applicant	**:**	34 Aigburth Drive Management Limited
Representative	**:**	Mr Douglas Cochrane of counsel, instructed by DTM Legal LLP
Defendants/ Respondents	**:**	Mr Wayne Musleh Mrs Rebecca Musleh
Representative	**:**	In person
Type of Claim/application	**:**	Liability to pay service charges under Landlord and Tenant Act 1985 s.27A
Judge	**:**	Tribunal Judge Mark Loveday (sitting as a judge of the County Court)
Tribunal Members	**:**	Tribunal Judge Mark Loveday Mr Bruce Bourne MRICS Mr David Ashby
Date and venue of hearing	**:**	26 February 2024, Havant Justice Centre
Date of Decision	**:**	21 March 2024

JUDGMENT AND DETERMINATION

Introduction

1. Aigburth Drive is a busy street in Liverpool running along the western side of the City's Sefton Park. The imposing detached Victorian villas which overlook the park have now largely been converted into flats and commercial properties. 34 Aigburth Drive is one of these, and it has been divided into three flats. This matter relates to 34B Aigburth Drive, which is the top floor flat [**p.83**].

2. The freehold is owned by 34 Aigburth Drive Management Limited ("the Company"). By a lease dated 12 December 1979, the flat was demised for a term of 65 years from 7 December 1979 ("the Lease"). Mr and Mrs Musleh were registered as proprietors of the Lease on 22 June 2007, and the office copies of their leasehold title shows it is subject to registered charge in favour of Topaz Finance Ltd ("Topaz"). The Lease contains very basic service charge provisions, as appear in Appx. A. The Company self-manages the premises, and it operates a service charge year which corresponds with the calendar year.

3. The dispute concerns £1,562.87 in service charges as follows:
    a. £836.62 service charges for the 2020 service charge year. These were demanded for payment on 8 June 2021 [**p.143**] and £495.18 of this is unpaid.
    b. £686.95 service charges for 1 January 2021 to 30 June 2021. This is the first instalment of the 2021 service charges demanded for payment on 8 June 2021 [**p.154**] and it is unpaid.
    c. £497.70 insurance rent in respect of the 2020-21 insurance year [**p.137**]. This was demanded for payment on 7 May 2021 and £380.74 is unpaid.

4. On 27 August 2021, the Company issued a claim in the County Court Money Claim Centre seeking payment of the above together with interest and costs. On 7 October 2021 [**p.9**], Mr and Mrs Musleh filed a Defence and Counterclaim for £17,400. On 12 November 2021, the Company filed a Reply and Defence to Counterclaim settled by counsel [**p.21**]. The claim was then transferred to the Defendants' 'home' County Court at Canterbury.

5. The matter has had an unhappy procedural history. On 10 March 2022, the claim was allocated to the small claims track [**p.58**] and a 4hr trial listed on 6 May 2022 (by Cloud Video Platform). On 28 May 2022, the trial was adjourned and re-listed for 21 April 2023 [**p.63**]. A hearing bundle was prepared for that hearing [**p.1**], but on 23 March 2023, the trial was again adjourned, and the matter listed for a short hearing on 18 April 2023 [**p.65**]. It is unclear what happened, but on 8 January 2024, DDJ Larringa ordered that the matter should be dealt with under flexible deployment [**SB p.18**]. The files were transferred to the tribunal's Southern Panel in Havant, which was local to the Canterbury County Court[1]. Further directions were given by

[1] Hence the unusual situation where a Liverpool matter is being dealt with in Havant.

Deputy Regional Tribunal Judge Dobson on 16 January 2024. A video hearing was then listed for 26 February 2024.

6. Shortly before the hearing, Mr and Mrs Musleh asked to attend the hearing in person. They were given permission to do so. As a result, the hearing was a hybrid one – with the judge, tribunal and Mr and Mrs Musleh in person, but with the Company and counsel appearing remotely. In addition to the original bundle, the Company's solicitors prepared a helpful supplemental bundle for the purposes of the hearing.

7. The nature of these proceedings meant it was necessary for the matter be dealt with in three stages:
    a. The judge dealt with two preliminary County Court applications at the outset. The judge indicated his decision on these and then rose.
    b. The tribunal convened after a short break and determined the matters within its jurisdiction. The tribunal concluded with an oral decision under r.36(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It then rose.
    c. Finally, the judge sat again, to consider the counterclaim and consequential orders. The judge then indicated the final order of the court.

8. The judgment of the court and the tribunal's written reasons under r.36(2)(b) of the rules are set out below.

County court - preliminary applications

9. Two procedural issues arise in relation to the County Court proceedings.

10. First, para 24 of Mr Cochrane's skeleton argument invited the court to strike out the Defendants' counterclaim "as a preliminary matter". Counsel accepted there is no formal application to strike out under CPR 3.4(2)(a), although attention was drawn to the court's own power to strike out of its own initiative. Mr Cochrane had no explanation about why no formal application was made earlier in the proceedings, and counsel eventually conceded he was not saying the court should strike out the counterclaim at this stage.

11. Secondly, by an application dated 19 February 2024, the Claimant sought permission to amend the Particulars of Claim under CPR 17.1(2)(b).

12. The proposed amendment [**SB p.27**] added extensive references to parts of clause 1, 3(i), 6 and Sch.4 of the Lease. It included various amendments to plead causation, etc. But most significantly, it sought to add a contractual claim for costs of £14,322.91 under clause 3(i)(d) of the Lease. It was said these had been incurred for the purposes of and incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925. The Defendants did not object to the amendments to plead the lease terms and other technical amendments. But they objected to the amendment to plead a contractual claim for costs under clause 3(i)(d) of the Lease.

13. This was a "very late" amendment (see notes to White Book at 17.3.8), and Mr Cochrane referred to the summary of principles for considering such amendments given by Pepperall LJ in *Essex CC v UBB Waste (Essex)* [2019] EWHC 819 (TCC); 184 Con L.R 76 at [8-11] (applying *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm) and *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 1345 (TCC), 160 Con. L.R. 73). There was essentially one rule. Parties should be allowed to amend their statements of case where the balance of (1) injustice to the applicant if the amendment was refused outweighed (2) the injustice to the other party and to litigants in general if the amendment was permitted. The timing of the application was an important factor, as were the consequences of allowing an amendment on a trial listing, whether there any further disclosure or evidence was required and whether the text of the re-amendments was substantially provided at an earlier stage.

14. At the hearing, I refused the application. These are my reasons for doing so:
    a. First, I was not satisfied that on present evidence the claim for contractual costs had any real prospect of success. Mr Cochrane accepted no s.146 notice had been given. And neither the witness statement of Mr Simmonds in the bundle [p.27], nor the further witness statement of Ms Anna Duffy filed in support of the application, suggested the legal costs had been incurred "for the purposes of" or "incidental to" the preparation of such a notice. Indeed, there was no evidence of the costs themselves. A contractual claim based on clause 3(i)(d) of the Lease was not therefore supported by evidence.
    b. Secondly, the timing of the application could not have been later. This was a "very late" application (see above). No explanation was given as to why the application was made so late, particularly after the matter had previously been listed for hearing on more than one occasion, and after counsel had been retained in relation to the pleadings as long ago as November 2021.
    c. Thirdly, the consequences of the amendment would inevitably mean the hearing could not proceed. The Defendants (who were unrepresented) were faced with a contractual claim which substantially exceeded the sums raised in the Particulars of Claim. There were entitled to amend their Defence (not least to raise arguments under Sch.11 to the Commonhold and Leasehold Reform Act 2002) and to adduce evidence of their own. It was hard to see how the trial could go ahead in these circumstances.
    d. Mr Cochrane pointed to the Reply 12 November 2021, which referred to clause 3(i)(d) of the Lease and which suggested the Claimant was entitled to its costs on a contractual basis. He contended the Defendants had therefore been "put on notice for more than two years that contractual costs would be sought". But the court does not agree that the text of the re-amendments was substantially provided at an earlier stage – the Reply crucially omitted any reference to the contractual sum claimed, namely £14,322.91.
    e. Finally, the court sees no real prejudice to the Claimant in not allowing the amendment. If the Claimant is right about its entitlement to payment of £14,322.91 under clause 3(i)(d), it may simply issue a further claim for payment of that sum. There is no particular reason to

make a claim for the costs of forfeiture in these proceedings, which relate to service charges, insurance rent and other administration charges.

Tribunal decision

15. Following the court's disposal of the above preliminary matters, the court rose. The tribunal then convened to decide the substantive issues in issue.

16. The 2020 service charge demand was supported by a "service charge breakdown" for that year which detailed the costs incurred by the Company under seven headings [**p.147**]:

Description	**Amount**
Bank charges	£33.20
Electricals	£750.00
Fire Safety – Kevin O'Reilly	£750.00
Companies House fee	£150
Gardening	£480
Cleaning	£118.50
10% Management charge	£228.17
	£2,509.97

Each flat's share of these costs (one third) was therefore £836.62.

17. The 2021 service charge demand was supported by an "Estimated Service Charge Budget for year 1st January 2021-31st December 2021". This also detailed estimated costs under eight headings [**p.156**]:

Description	**Amount**
Window cleaning	£750.00
Gardening	£750
Communal Cleaning	£657
Repairs	£500
Electrical testing (every 6 months)	£470
Communal electricity	£120
Audit	£500
Administration cost (calculated at 10% of the above)	£374.70
	£4,121.70

Each flat's share of these costs (one third) was £1,373.90 for 2021. The Company demanded contributions in two instalments of £686.95. The claim includes the first instalment, which was demanded for payment on 8 June 2021 and which was described as a service charge for "1/1/21- 30/6/21".

18. The insurance rent claim was supported by an invoice for £558.56 dated 8 June 2021 [**p.148**].

Evidence

19. The Company relied on witness statements of Mr Philip Simmonds (a Director of the Company) dated 18 April 2023 **[p.27]** and of Ms Anna Duffy (the Company's solicitor) dated 19 February 2024 {**SB p.12**]. Mr Simmonds gave evidence at the hearing and was cross examined by the First Respondent in relation to the 2020 accounts. Mr Simmons accepted no consultation had taken place under s.20 Landlord and Tenant Act 1985 about major works carried out in 2020. He explained the Company had paid for various works, but it had been advised that since it had not consulted, it could only recover contributions of £250 per flat. Hence the 2020 accounts showed "Fire Safety Costs" of £750 (i.e., £250 per flat) even though it had incurred costs of £3,900 on fire safety works in the common parts: see invoice sated 10 June 2020. The same applied to "Electricals", which were limited to £750 in the accounts. The respondents had only been invoiced for one third of these costs, or £250 for major works and gardening. When asked by the tribunal, Mr Simmonds said he was unaware of the provisions of s.20ZA of the 1985 Act or the tribunal's power to dispense with consultation requirements. Mr Simmonds was further directed to various vouchers and receipts for works, including gardening and repairs. He maintained that all the works had been completed in accordance with these invoices. Questions were also asked about the individual items in the 2021 estimated service charge budget, but for the reasons set out below, it is unnecessary to deal with that aspect of Mr Simmonds' evidence.

20. The First Respondent was also permitted to cross-examine in relation to the counterclaim at this stage, and this is dealt with below.

Submissions

21. In opening, Mr Cochrane referred to the service charge provisions of the Lease at 4(ii), which clearly provided for payment of service charges after the Company incurred relevant costs. The 2020 service charges were payable under this provision. As to the insurance rent, this was equally clearly payable under clause 1. Counsel accepted the 2021 service charges were in the nature of an interim service charge, and that there was no specific provision in the Lease which required payment of an interim service charge. In closing, counsel was pressed about the contractual basis of the claim for the 2021 service charges. He accepted he was not relying on any implied term, and that to be recoverable, the 2021 charges must fall within clause 4(ii) of the Lease. Mr Cochrane argued that by the time of the June 2021 demand for payment, some costs had already been incurred in the first six months of 2021. This included most of the gardening costs and about half the cleaning costs, as shown in the various expenditure receipts in the bundle.

22. In closing, Mr Cochrane also pointed to the tension in the respondents' arguments between the complaints about excessive costs and complaints about condition. The Company had plainly spent a lot more on the premises than it sought to recover from the lessees through the service charges – as demonstrated by the decision to cap some items of relevant cost at £250 per flat. As to specific items of cost in 2020, these were all supported by invoices and there was nothing to suggest the costs had not been incurred. As far as arguments about reasonableness were concerned, the lessees had neither pleaded s.19 of the 1985 Act, nor had they "squarely put" the reasonableness of

the Company's costs in issue. There were no alternative costings, merely broad-brush assertions that the costs had not been incurred.

23. The respondents relied on their detailed Defence, which the First Respondent developed in oral argument. These arguments can be summarised as follows:
    a. There was general disrepair, in particular relating to rainwater gutters: Defence para 1.
    b. The invoices "contain services that have not been consulted or agreed by us[2]", particularly a failure to consult in relation to the installation of a fire alarm system in 2020: Defence paras 2 and 6.
    c. Pursuant to clause 1 of the Lease, the Company could only demand service charges "after the expenditure thereof": Defence para 3.
    d. The respondents had requested receipts and invoices under the terms of the summary of tenant's rights and obligations which accompanied each demand, but no receipts were provided: Defence para 6.
    e. Several receipts for expenditure in 2021 were missing – in particular, there were no receipts of repairs (£166.66) or window cleaning: Defence para 6.
    f. Under the terms of the Lease, the Company may only claim insurance rent "in advance": Defence para 6.

Determination

24. The first argument relates to disrepair to the gutters. But this is not strictly speaking a matter for the tribunal to deal with under s.27A of the 1985 Act. The tribunal cannot simply reduce service charges to take into account a failure by the landlord to repair (for example, by applying s.19 of the 1985 Act). The tenant's remedy for breach of a repairing covenant is to make a separate claim or counterclaim and seek damages against the landlord: *Continental Property Ventures v White* [2007] L&TR 4.

25. The respondents' second argument clearly relates to s.20 of the 1985 Act, and it has been understood by the Company in this way. The Company accepts it has failed to consult in accordance with Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 and that the recoverable cost of qualifying works is limited to £250 per flat: see s.20(3) of the 1985 Act and reg.6 of 2003 regulations. Although the Company's service charge accounting for 2020 is unusual, the evidence quite clearly shows the Company is not seeking to recover more than £250 per flat for fire safety works in that year. Indeed, it has similarly limited the 2020 cleaning costs to £250 per flat, even though these cannot conceivably be described as "qualifying works" within the meaning of s.20ZA(2) of the Act. But in any event, the 2020 service charge already reflect the £250 cap imposed by s.20.

26. For the sake of completeness, it should also be said that s.20 of the 1985 Act has no application to any of the costs included in the 2021 service charges, because the statutory limitation has no application to interim or on account

[2] The respondents often said items of costs were not "agreed" by them. But the First Respondent explained at the hearing he was not suggesting there was any collateral agreement about these costs.

service charges. Similarly, the insurance rent is not capped by s,.20, because insurance is not within the s.20ZA(2) definition of "major works".

27. The third argument relates to contractual recoverability of the service charges. The tribunal agrees with Mr Cochrane that the 2020 service charges are plainly payable under clause 4(ii) of the Lease, and nothing more need be said about those.

28. But the 2021 charges are different. It is clear enough that the June 2021 demand for payment (which is the subject of these proceedings) is not intended to include any costs which have actually been incurred. The "estimated budget" is exactly that, an assessment by the Company of the costs it was going to incur during the 2021 service charge year. The tribunal finds that the Lease simply makes no express provision for the recovery of "interim" or "on account" service charges based on estimated expenditure. This interpretation receives strong support from the complete absence of any balancing or reconciliation mechanism in the Lease at the end of the service charge year once costs are known. Although in many cases it may be possible to imply a term into the Lease which allows for recovery of an interim service charge, this was neither pleaded by the Company not argued for by counsel. The alternative argument made by the Company (namely that the July 2021 demand was made six months into the service charge year and after some costs had actually been incurred) is irrelevant. The scheme of this Lease only allows the Company to recover service charges in arrears and only after the costs have been incurred. The 2021 demand in this case was forward facing and expressly dealt with "estimated", not incurred costs. As the respondents succinctly put it, the Company could only demand service charges "after the expenditure thereof". It follows that the 2021 service charges are not recoverable under the Lease.

29. The fourth argument can be dealt with briefly. Sections 21 and 22 of the 1985 Act do not include any remedies in the tribunal. Failure to provide information made lead to a prosecution, but there is no power to limit service charges.

30. The fifth suggestion that some services might not have been provided because receipts were missing was not pressed home with any degree of force. The tribunal accepts Mr Simmonds evidence that the services in the 2020 service charge statement were provided, and it is satisfied there is sufficient supporting documentation in the form of expenditure receipts.

31. Finally, the respondents argue the insurance rent can only be recovered in advance of premiums being incurred. This interpretation would create bizarre results. An 'on account' or interim demand for payment of an insurance contribution based on an *inaccurate* estimate of the premium could be recovered, whilst a demand made after the event and based on the *accurate* known premium could not be. But in any event, the argument is unsustainable. The wording of the Lease is clear. Clause 1 says the insurance rent is payable "on the half-yearly day for the payment of rent *next ensuing after the expenditure thereof*". Having said that, the rent dates in clause 1 of

the Lease are 24 June and 25 December in each year - so the first instalment of insurance rent was payable on 24 June 2021, not 8 June 2021.

32. Finally, the tribunal agrees with the Company that the respondents have not identified any specific ways in which the 2020 relevant costs which formed part of the 2020 service charges were not reasonably incurred under s.19(1) of the 1985 Act. Less still have the respondents advanced any alternative figures for the service charges payable or produced comparable evidence of alternative costs for services.

Tribunal costs

33. Section 20C of the 1985 Act provides:

> "20C.— **Limitation of service charges: costs of proceedings**.
> (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … a residential property tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
> …
> (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

34. The starting point is the tribunal is not exercising a conventional costs jurisdiction, but is determining to what extent the respondents should be relieved of a contractual obligation which it has willingly entered into: see, for example, ***Obi-Ezekpazu v Avon Ground Rents Ltd*** [2022] UKUT 121 (LC) at [53]. The presumption is therefore that no s.20C order is made.

35. The tribunal considers it is not just and equitable to make a s.20C order. Apart from the above presumption, the applicant succeeded in recovering service charges and insurance rent from the respondents, and there is no suggestion it has acted improperly in its conduct of the tribunal proceedings.

Tribunal conclusions

36. The tribunal determines under s.27A of the 1985 Act that the respondents are liable to pay the following service charges to the Company:

    a. 2020 service charges amounting to £836.62, payable on 8 June 2021.
    b. insurance rent of £497.70, payable on 24 June 2021.

    But it finds the respondents are not liable to pay the £686.95 estimated service charge for the period 1 January 2021-30 June 2021. It refuses the application for an order under s.20C of the 1985 Act.

County court judgment

37. The starting point here is that the tribunal's determination means the Company is entitled to judgment for £875.92 (i.e., £495.18 + £380.74 – see para 3 above).

38. That leaves the Pt.20 counterclaim and consequential orders.

Counterclaim – the facts

39. The background to the counterclaim is clear from the First Defendant's witness statement and correspondence in the bundle. During the pandemic lockdown, the Claimant sought access to the flat, which was tenanted at the time. The tenant (a Mr Phil Urmston) gave notice to the Defendants terminating the tenancy, and there is an email from the tenant to the Second Defendant dated 13 June 2020 to this effect [**p.109**]. The Defendants then put the short lease of the flat on the market with Rightmove [**p.111**]. On 5 August 2020, Ms Simmonds contacted the Defendants' solicitors by email offering to buy it for £215,000 [**p.113**]. Eventually, on 9 October 2020, agreement was reached for the sale price of £215,000 [**p.119**]. The bundle included emails showing the difficulties the Claimant then faced financing a purchase of such a short lease. The Claimant apparently needed to sell another property to finance the purchase and to obtain a lease extension. Eventually, on 2 December 2020, Ms Simmonds withdrew the offer because "we have been struggling in these unprecedented times and are only able to get £170,000 together". She asked if the Defendants wanted to accept this figure instead [**p.125**].

40. In cross-examination, Mr Simmonds was referred to a letter from Topaz to the Defendants dated 14 September 2020 which referred to an outstanding loan of £167,034.57. Mr Simmonds admitted a tenant at 34 Aigburth Drive had opened the Topaz letter and passed it onto him. Mr Simmonds accepted he knew the loan details were private. He was then referred to an (undated) handwritten letter he had written to Topaz offering to "pay off the loan in order to preserve your debt and take ownership of the flat". It was put to Mr Simmonds that he had made a "financial gain" from the information in the September Topaz letter, which he denied. The Claimants' legal representatives were also in correspondence with Topaz about the lender's intentions. There are letters dated 14 and 20 January 2021 **[p.128] and [p.129].** Topaz replied on 3 February 2021 [**p.133**] that it would only consider paying the service charges if there was a s.146 notice and/or court proceedings [**p.133**].

Counterclaim – the submissions

41. The Defendants' pleaded case is that they "have reason to believe that the Claimant has used personal information and sensitive bank details relating to our Mortgage account to withdraw their initial offer of £215,000 to a much lower offer of £170,000". They believe the personal information was given by Ms Lisa Simmonds to her husband, Mr Simmonds. Indeed, Mr Simmonds had written to Topaz offering to pay off the loan and take ownership of the flat. The Part 20 counterclaim further states they are "making a counter claim against the claimant for loss of rents of £17,400".

42. The Claimant's Reply simply pleads the counterclaim is embarrassing and that it discloses no cause of action. Mr Cochrane's skeleton argument contended that:
    a. No cause of action was pleaded;
    b. The claim was said to be for 'loss of rents of £17,400', but no justification for this number was pleaded;
    c. Nothing in the counterclaim sets out anything that could potentially cause a loss of rent. It complains about the loss of the sale of the Defendants' leasehold interest, but that did not cause a loss of rent.

Counterclaim - discussion

43. The basic requirements for the tort of breach of confidence are: (1) the information is confidential; (2) it was imparted to import an obligation of confidence; and (3) there has been or will be an unauthorised use of that information to the detriment of the party communicating it.

44. In this particular case it is at least possible the first two ingredients are made out. The existence of the Topaz loan was not confidential, since this appeared on the Land Registry entries for the leasehold title. But the amount of the outstanding loan was confidential. Similarly, details of the loan balance were imparted by Topaz in confidence. The Defendants did not authorise use of the information by Mr Simmonds.

45. But that is not the end of matters. The Defendants still have to prove the tort caused a loss and to establish their right to the damages claimed. I agree with counsel that not only have the Defendants failed to plead these two elements, but that neither is made out on the evidence.

46. As to the pleaded case, counsel suggests "it should not be for the Claimant (or the Court) to mine the documents (or to allow the Defendants in the face of the Court) to cobble together a cogent claim when none has been pleaded". I agree. In particular, causation is not pleaded at all. As Mr Cochrane points out, a reduction in the price offered does not obviously result in a loss of rent. Even if loss was put on the basis of the witness statement (see below), there are obviously difficulties claiming damages for loss of bargain in tort. But these need to be pleaded.

47. As to evidence, causation is essentially a question of fact. Did the Claimant *use* the private information so as to cause a detriment to the Defendants? What the First Defendant says in his witness statement at para 41 **[p.38]** is:

> "41. We ***believe*** this information gained from a royal mail post and used by Mr Phil Simmons was also disclosed to Mrs Lisa Simmons (wife of Mr Phil Simmons) director/freeholder/owner of 34 Aigburth drive Management limited along with the other director/freeholder/owner Mrs Lyn Hahne of 34 Aigburth drive Management Limited and used in the email dated 7th December 2020 … to lower the original offer of

£215,000 to £170,000 a financial loss to us, the defendants of £45,000." {my emphasis].

This allegation was put to Mr Simmonds in cross-examination and Mr Simmonds denied it.

48. I prefer Mr Simmonds' evidence about the price reduction on this point for the following reasons:
    a. The allegation put to Mr Simmonds was a bare assertion. Nothing was put to him to rebut the answer given. And as emphasised above, the allegation put to Mr Simmonds was simply based on the *belief* of the First Defendant.
    b. Mr Simmonds's evidence is consistent with the contemporary correspondence with the Defendants' solicitors. This suggested the reduction in the price resulted from the Claimant's inability to finance the purchase of the leasehold interest at a price of £215,000 and its difficulty in selling assets as an alternative means of finance.
    c. Mr Simmonds's evidence is also consistent with the factual circumstances. The Lease had a very short unexpired term, required a (possibly costly) lease extension, and there were ongoing issues about liability to pay service charges. It was not a conspicuously attractive security for a loan. Indeed, it is telling that in response to the reduced offer, on 20 October 2020 the Defendants' solicitors advised their clients on 20 October 2020 that "it may come as no surprise it has been difficult to get a mortgage on the flat with such a short lease" **[p.124]**.
    d. The chronology above does not easily fit with the Defendants' case. It is not known when the letter of 14 September 2020 came into Mr Simmonds' possession or when Mr Simmonds wrote to Topaz referencing the loan. But in any event, we know Ms Lisa Simmonds agreed a price of £215,000 on 9 October 2020, and that this price remained on the table until for another eight weeks. It is improbable (but not impossible) that the loan information would only have been in the hands of the Claimants after 9 October 2020. If it was, then this suggests it was not the real reason for the price reduction.

49. A similar point can be made about the evidence of the alleged damages of £17,400. It is not enough simply to quantify the Defendants' loss as a "loss of rent". I have already set out the First Defendant's evidence about loss in para 46 above where he suggests a loss of £45,000 based on a loss of bargain. This evidence is wholly inconsistent with the pleaded case. Indeed, the only evidence before the court about loss of rent is also inconsistent with the Defendants' pleaded case. This shows the last known tenant (Mr Urmston) left the flat in June 2020, that he left well before the loan information came into Mr Simmonds' hands. and that he left for very different reasons.

50. It follows I have no hesitation in dismissing the Pt.20 counterclaim. A claim for £17,400 damages is a significant one, and it needs to be properly pleaded and supported by evidence. Even having due regard to the fact the Defendants act in person, their counterclaim fails on both counts.

Consequential orders

51. Mr Cochrane sought interest under s.69 County Courts Act 1984 at the rate of 8%pa. The First Defendant agreed this was an appropriate rate of interest. Interest at 8%pa on £495.18 from 8 June 2021 to the date of the hearing amounts to £107.77. Interest at 8%pa on £380.74 from 24 June 2021 amounts to £81.53. Total interest is therefore £189.30.

52. As to the County Court costs, the First Defendant contended that the counterclaim should not have been dismissed. But I have decided that. Moreover, the Claimant has succeeded in at least part of the claim. Costs ordinarily follow the event. I therefore order the Defendants to pay the Claimant's costs of the County Court claim.

53. The claim was allocated to the small claims track on 4 March 2022 [**p.58**]. This was after the counterclaim for £17,400 was received by the court. Costs are therefore ordinarily awarded under CPR 27.14. Although Mr Cochrane argued the Defendants had behaved unreasonably under CPR 27.14(2)(g), I do not find that the counterclaim meets the high threshold for unreasonable behaviour as described in the notes to the White Book at 27.14.4. I therefore allow small claims track costs only. Regrettably, I have made no note of the court fees or other sums claimed. I will therefore ask counsel to draw up an order with these sums on receipt of this judgment.

54. Finally, for the purposes of any appeal in the County Court, I extend time under CPR 52.12(2)(a) for any appeal of my order in the County Court to 28 days after this judgment is sent to the parties. This will bring the CPR appeal date into line with the date for any appeal under r.52(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. For the avoidance of doubt, I am sitting as a Deputy District Judge of this court.

Judge Mark Loveday

21 March 2024

Appeals

1 A person wishing to appeal the decision of the first-tier Tribunal (Property Chamber) to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.

4 The application for permission to appeal must identify the decision of the tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

5 A person wishing to appeal the decision of the County Court judge must do so in accordance with the Civil Procedure Rules.

APPENDIX A: MATERIAL LEASE TERMS

1.

… YIELDING AND PAYING therefor in respect of the said term the yearly rent of £20.00 by half-yearly payments on the 24th day of June and the 25th day of December in every year free of all deductions whatsoever … AND ALSO PAYING by way of further or additional rent from time to time a sum or sums of money equal to one third of the amount which the Lessors may expend in effecting or maintaining the insurance of the building and other parts of 34 Aigburth Drive Sefton Park aforesaid against loss or damage by fire and such other risks (if any) as the Lessor thinks fit as hereinafter mentioned such last-mentioned rent to be paid without any deduction on the half-yearly day for the payment of rent next ensuing after the expenditure thereof.

…

3 (i) The Lessees HEREBY JOINTLY AND SEVERALLY COVENANT with the lessor as follows :-

(a) To pay the said rents during the said term at the times and in the manner aforesaid without deduction

….

(d) To pay all costs charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the court

…

4. THE Lessees HEREBY JOINTLY AND SEVERALLY COVENANT with the Lessor and with the owners and lessees of the other flats comprised in 34 Aigburth Drive aforesaid that the Lessees will at all times hereafter :-

…

(ii) Contribute and pay one equal one-third part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto

…

5. THE LESSOR HEREBY COVENANTS with the Lessees as follows :-

…

(d) That (subject to contribution and payment as hereinbefore provided) the Lessor will maintain repair decorate and renew (i) the main structure and in particular the roof chimney stacks gutters and rainwater pipes of 34 Aigburth Drive aforesaid …

(e) That (subject as aforesaid) the Lessor will so far as practicable keep clean and reasonably well lighted the passages landings staircases and other parts of 34 Aigburth Drive aforesaid …

(f) That (subject as aforesaid) the Lessor will so often as reasonably required decorate the exterior of the building …

6. PROVIDED ALWAYS and it is hereby agreed that if the rents hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the part of the Lessee herein contained shall not be performed or observed then in any such case it shall be lawful for the Lessors at any time thereafter to re-enter the demised premises …

…

THE FOURTH SCHEDULE ABOVE REFERRED TO

Costs expenses outgoings and matters in respect the Lessees are to contribute.

…

5. The cost of insurance against third-party risks in respect of 34 Aigburth Drive aforesaid if such insurance shall in fact be taken out by the Lessor

…

7. All other expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of 34 Aigburth Drive aforesaid