



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

Case reference : **LON/00AE/LAC/2021/0009**

Property : **66 Kingfisher Way, Brentfield Road,
Neasden, London NW10 8TZ**

Applicant : **Mitchell Brook Gardens No. 3 Residents
Company Limited**

Representative : **Mr Priya Gopal, counsel**

Respondent : **Mohammed Sajid**

Representative : **Mr Mohsin Malik of Law & Co.
Solicitors**

Type of application : **Liability to pay administration charges**

**Tribunal
member(s)** : **Judge Tagliavini
Mr O Dowty MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **23 February 2024**
Date of decision : **5 March 2024**

DECISION

The tribunal's decision

1. The application is dismissed.
2. The tribunal finds it has no jurisdiction in respect of this application as the matters in issue have been the subject of an Agreement entered into by the parties on 23 June 2020, whereby the respondent agreed to pay costs in respect of the tribunal proceedings in *ref LON/OOAE/LSC/2019/0343* in the sum of £6,100 inclusive of VAT and the applicant accepted payment at the rate of £1,200 per month.
3. It is accepted by both parties the terms of the Agreement were breached by the respondent. However, that is a matter of enforcement for the county court and does not fall within the jurisdiction of this tribunal

The application

4. In an application dated 15 December 2020 the applicant claimed:

Expenses of £2,110.00 (including VAT) in the form of an administration charge.

Legal fees of £5,143.20 (including VAT) in the form of an administration charge.

Total: £7,253.20

Background

5. The applicant previously submitted an application for a determination of the respondent's liability to pay and reasonableness of service charges. This matter was dealt with under *ref: LON/OOAE/LBC/2019/0343* ('the Claim'). Further to the Tribunal's directions and following service of the applicant's statement of case, the respondent subsequently agreed to pay all outstanding service charges in full. This is recorded in the tribunal's decision dated 2 March 2020.
6. In paragraph (2) of the decision dated 2 March 2020 in *ref: LON/OOAE/LBC/2019/03* the tribunal determined:

As Mr Sajid has admitted that the service charges which were the subject of the application are payable and reasonable the case is deemed withdrawn as there is no longer a dispute between the parties meaning the tribunal has no jurisdiction.

7. The applicant now seeks the costs incurred in respect of the Claim in the sum of £7,253.20. The applicant also told the tribunal it would, in due course and by way of a further application (if required), seek the costs of the current application which were said to be in the region of £10,000.

The hearing

8. A oral video hearing was held on 23 February 2024 at which Ms Priya Gopal of counsel represented the applicant. Mr Mohsin Malik of Law & Co. represented the respondent. The parties relied on a single digital bundle of 167 pages and both the applicant and the respondent served late evidence, which was admitted by the tribunal

The tribunal's reasons

9. During the course of the hearing the tribunal's attention was drawn to a series of letters from the applicant seeking payment of the administration charges incurred in respect of the previous Claim made to the tribunal.
10. On 26 May 2020, the applicant wrote in an email to the respondent:

Thank you for your email of today. We are seeking our client's instructions/confirmation of the further payment referred to. Our client's costs were endorsed in the Section 146 Notice which we sent to you on 19 May. A further copy of that Notice is attached. **The costs referred to therein relate only to the Tribunal proceedings in respect of the outstanding service charge**s** and do not relate to the breach of repairing covenants or the County Court proceedings. We look forward to hearing from you further.*

*The s.146 Notice state costs of the tribunal proceedings were estimated in the sum of £6,100 (including VAT).

****Emphasis added**

11. In an email dated 9 June 2020 the applicant wrote to the respondent:

We refer to our email of 28 May and attachments. Please would you let us know by this coming Thursday, 11 June, whether your client agrees the costs endorsed in the Section 146 Notice and, what proposals your client has for paying those costs. If we do not hear from you by 11 June and/or your client does not agree to pay the costs included in the Section 146 Notice, our client will serve Notice of Administration Charges on your client and will proceed with a further determination by the Tribunal. We look forward to hearing from you on or before Thursday 11 June.

12. In an email dated 23 June 2020 the applicant informed the respondent:

*We refer to our recent email exchanges. **Our client will accept payment by instalments at the rate of £1200 per calendar month towards the outstanding service charges and the costs endorsed on the Section 146 Notice.** The payments will be applied towards the costs first of all and then the service charges. If your client does not maintain the instalment payments as agreed, then our client's rights are reserved and that includes the right to revert to your client's mortgagees who have offered to clear the service charges.*

The above agreement does not affect our client's claims for the following:

- 1. The costs and damages in the injunction proceedings in the County Court at Willesden on which we shall revert to you shortly.*
- 2. The claim for costs on the Tribunal proceedings on the breach of repairing covenant on which we shall also be reverting to you shortly.*

***Emphasis added**

11. On 27 September 2020, the applicant wrote in an email to the respondent:

*We refer to our email to you of 21st August. **Your client has not made any further payment, in spite of the agreement reached.** Please advise your client to make this month's payment by return. Please ensure that your client pays the instalment of £1200.00 by return and that future monthly instalments are made on or before 20th of each consecutive month. If payment is not received by its due date, our client reserves the right to serve Notice pursuant to Section 146 of the Law of Property Act 1925 without further Notice.*

***Emphasis added**

12. On 30 September, the applicant wrote:

*We acknowledge receipt of your email of today. **Your client previously agreed to pay the costs associated with the Service Charge proceedings by instalments of £1200.00 per month initially on or before 11th of each month and then unilaterally changed by your client to on or before 20th of each month*.***

Is your client going to honour this agreement or not? If not, we shall advise our client to serve Notice pursuant to Section 146 of the Law of Property Act 1925.

***Emphasis added**

13. Further email correspondence was entered into by the parties in which the applicant stated on 29 October 2020:

Re: Your Client: M Sajid - 66 Kingfisher Way - Services Charges & Costs DEB:00102000017538

We have taken instructions from our client and our client has confirmed that he is happy to pay the costs for the disbursements in this matter.

However, in relation the legal costs due to the recent Pandemic he is financially struggling and is not in a position to pay such high legal costs given that the matter was settled out of court and the matter was withdrawn.

Our client is happy to meet 50% costs of your client's legal costs. Kindly confirm if this is acceptable for us to take further instructions.

13. On 26 November 2020, the applicant served a Notice of Administration Charges together with a Notice of Tenant's Rights and Obligation claiming the sum of £7,35.20.

14. In a witness statement dated 23 February 2024, the respondent stated:

'...I instructed my previous solicitors and admitted the amount claimed towards costs. Please refer to this correspondence between solicitors. On the basis of admission the applicant should not have made this application.'

15. The tribunal finds, by reason of the above correspondence, the parties did on 23 June 2020, enter into an agreement whereby the respondent agreed to pay the arrears of service charges claimed in *ref: LON/00AE/LSC/2019/034* in addition to the costs of those proceedings as quantified by the applicant on 19 May 2020 in the sum of £6,100 inclusive of VAT. The tribunal finds that once this agreement was reached by the parties, the tribunal no longer had jurisdiction to deal with the reasonableness of the administration charges and enforcement of that agreement had to be by way of a claim in the county court.

16. Paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 states:

5(1)An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount which is payable,

(d)the date at or by which it is payable, and

(e)the manner in which it is payable.

(2)Sub-paragraph (1) applies whether or not any payment has been made.

(3)The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4)No application under sub-paragraph (1) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,

(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c)has been the subject of determination by a court, or

(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement

17. The tribunal finds that by reason of the operation of paragraph 5(4)(a) of the 2002 Act, the applicant is precluded from making this application to the tribunal, the respondent having entered into an agreement to pay the administration charges now claimed.
18. Therefore, the application is dismissed for want of jurisdiction

Rights of appeal

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).