



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

- Case Reference** : CHI/29UH/LDC/2023/0117(1)
CHI/29UH/LSC/2023/0121(2)
CHI/29UH/LAC/2023/0013(3)
- Property** : Flats 1 – 230 Scotney Gardens Maidstone
Kent flats 4 11 12 19 21 22 24 26 28 29 42
46 50 80(2) and (3)
- Applicant** : Scotney Gardens RTM Management
Company Limited
- Representative** : Mr Cockburn instructed by
Spencer West LLP
- Respondent** : Ivor Bates
- Representative** :
- Type of Application** : Application for dispensation of all or any of
the consultation requirements - section 20
of the Landlord and Tenant Act 1985.
Application for a determination of liability
to pay and reasonableness of service
charges section 27A Landlord and Tenant
Act 1985.
Application for a determination as to
liability to pay an administration charge or
for the variation of a fixed administration
charge – Schedule 11 to the Commonhold
and Leasehold Reform Act 2022.
- Tribunal Member(s)** : Regional Judge Whitney
Mr Bourne MRICS
Mr Ashby FRICS
- Date of Hearing** : 31 May 2024
- Date of Decision** : 11 June 2024

DECISION

Background

1. There are two applications for determination, one in respect of service charges and the other administration charges claimed by the Applicant from the Respondent who is the owner of 14 leasehold flats.
2. Directions were issued by the Tribunal on 13 October 2023, 7th November 2023 and 24th January 2024. The later following a hearing at which Mr Bates did not attend.
3. The most recent directions included provision for a Scott Schedule to be produced in respect of each of the years in dispute being the actual years ending 2019 to 2023 inclusive and the estimated charges for the year 2024. The directions provided that if Mr Bates did not object to any specific item he would be deemed to accept the sum claimed was reasonable and payable.
4. The Applicants had provided an electronic hearing bundle consisting of 949 pdf pages. References in [] are to pages within that bundle. The Applicant had also supplied bundles of invoices and the like relating to each of the service charge years in dispute. A video showing the development was supplied in advance and reviewed by the Tribunal.
5. Counsel for the Applicant had supplied a skeleton argument and a bundle of authorities. Mr Bates on the day prior to the hearing sent an email suggesting there were questions he wished to ask of the managing agent Mr Beirne at the forthcoming hearing.

Hearing

6. The hearing took place on 31st May 2024 at Havant Justice Centre. The hearing was recorded.
7. The Applicant was represented by Mr Cockburn of counsel. Also in attendance were Ms Ponnithurai, solicitor and the following persons who had given witness statements Mr Hay, Mr Rafill, Mr Philpott and Mr Monks.
8. Mr Cockburn explained that Mr Beirne was not in attendance due to various health issues.
9. Mr Bates was not in attendance.
10. Below is a precis only of the most salient parts of the hearing.

11. Mr Cockburn explained that his clients accepted the actual valid demands were those served on 13th October 2022. An example was at [198]. He submitted given Mr Bates had raised no challenge to the sums he was deemed to accept the sums were reasonable. In his submissions given each of the demands was served which he suggested complied with the terms of the lease and statutory requirements for each year claimed the service charges were due and payable.
12. Mr Cockburn suggested his client was entitled to compounded interest. He relied on clause 1 of the lease [69 & 70] which provided interest was payable at 5% above the HSBC plc base rate. Clause 3(5)(a) also allowed recovery of interest at the same rate [76]. Mr Cockburn suggested that once interest was demanded it could then be compounded. He referred to a case in the Construction Law Journal 1993 9(3) 213-232 relating to contractual interest on certificates.
13. Mr Philpott, the company accountant gave brief evidence to confirm his statement [802-804] and to answer questions on the figures.
14. Mr Cockburn seeks reimbursement of the fees paid to the Tribunal. In respect of applications pursuant to Section 20C and Paragraph 5A he suggested Mr Bates had not attended and by reference to [661] he suggests Mr Bates has stated he has used withholding service charges for his own means.

Decision

15. We thank Counsel for the Applicant for his submissions and assistance. We have considered all within the bundle and the skeleton sent to us.
16. We considered whether or not we should proceed in the absence of Mr Bates. Having read the email he sent dated 30th May 2024 to the Tribunal we are satisfied that he was aware of the hearing. Whilst it makes no specific mention of the hearing the reference to wanting to ask questions of a witness and the timing makes clear he was aware of the same in our judgment. We were satisfied he had received the earlier directions and yet despite the same has chosen to take no meaningful part in these proceedings. That is his prerogative, but we are satisfied we can and should proceed to determine the same.
17. Turning firstly to the question of reasonableness. Prior to the hearing on 24th January 2024 Mr Bates had made generalised challenges to the service charges claimed for each of the years 2019 to 2023 for actual expenditure and for the budgeted expenditure for 2024. As a result we did issue very specific directions requiring him to state his objections to the items claimed.
18. In particular these required Mr Bates to identify the specific items he sought to challenge. He has taken no further part and we find he has

been given opportunity to challenge the sums claimed but has chosen not to. We are satisfied as a result that each of the individual items is reasonable.

19. In respect of the demanded invoices which have been issued for each of the years Mr Cockburn helpfully conceded that it was not until demands were sent dated 13th October 2022 that each of these satisfied the requirements of the lease save that for the year 2023 and the estimate for 2024 which were sent on 13th October 2023. Copies of each of the demands for each of the 14 flats and the accounts were to be found in the bundle. See [180-214] for the year 2018-2019.
20. We are satisfied that the demands were valid demands and that the sums claimed in respect of each of the Respondents 14 flats being numbers 4, 11, 12, 19, 21, 22, 24, 26, 28, 29, 42, 46, 50 & 80 were due and payable for each of the years subject to this application being the service charge years ending 2019-2023 inclusive and the budgeted amount for the year 2024.
21. We find the sums claimed by the Applicants for the service charge years 2019-2023 and the budgeted amount for 2024 are reasonable and payable by Mr Bates in respect of each of his 14 flats.
22. We were told that certain payments had been made in respect of certain flats leaving an accumulated total due and owing of £119,973.20 [167]. This amount is calculated having regard to the demands for each flat less the payments received.
23. We find that the Applicants are entitled to charge interest on the sums due and owing from 21 days from the date of the valid demand (being 13th October 2022 and 13th October 2023). We accept the letter dated 6th September 2023 [45] is a demand for administration charges.
24. However we are not satisfied that the wording of the lease allows such interest to be compounded. Whilst we accept there are two references to interest being payable these both relate to interest being payable on service charges due and owing. The clauses fix the rate that can be applied being 5% above the HSBC plc base rate. Both clauses provide that interest shall “be calculated on a day to day basis” (see lease [70 & 76]). In our judgement it is clear that the references within the lease are to ensure that both the Freeholder and the management company are both entitled to recover interest. In this case it is an RTM Company who manages but subject to the lease terms.
25. Counsel referred us to authority however we are satisfied that this can be distinguished referring to entirely different subject matter. In our judgment the wording of the lease is clear that interest continues to accrue on any and all sums which are more than 21 days overdue until they are paid at a rate of 5% above the prevailing HSCB plc base rate. Hence the reference to calculation on a day to day basis.

26. We find that interest accrues at 5% above HSBC plc base rate on all sums due and owing, calculated on a daily basis until payment is made.
27. Turning to the question of orders pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 our earlier directions indicated we would consider what if any orders we should make. Such orders are at our discretion. Mr Bates in his statement appeared to refer to wishing to seek such orders.
28. This application was made by the RTM. Mr Bates is not obligated to take part, he is entitled as he has done to do nothing and see if the application is successfully pursued. It has been. However initially Mr Bates did make what appeared to be wide ranging challenges. He does acknowledge that it is likely he would be found liable to make payments and that he had what we will call his own agenda. Taking account of all matters we refuse to make orders pursuant to Section 20C and paragraph 5A. This means it may be open to the RTM to recover such costs as they have incurred as service charge items or as further administration fees from Mr Bates if the leases so allow although we make no finding as to that.
29. We are invited to make an order that the Applicant may recover the application fees paid. The Applicant has been wholly successful and we are satisfied that the Respondent should within 28 days reimburse such sums being £300.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
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.

