



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

Case reference : **LON/00AB/LSC/2023/0159**

Property : **189 City View, IG1 1NL**

Applicant : **Millpond Properties Limited**

Respondent : **Joan Teresa Stephenson**

Type of application : (a) **Transfer from County Court
(Case number: G68YX595)**
(b) **Service Charge application**

Tribunal : **Judge Martyński
Mr K Ridgeway MRICS**

Date of hearing : **27 October 2023**

Present at hearing: : **Ms Doliveux (Counsel for the Applicant)**
**Mr Sullivan (Managing agent's
representative)**
Ms Stephenson

Date of decision : **21 November 2023**

DECISION

Decision summary

1. The Service Charges claimed and outstanding in the County Court proceedings in claim number G68YX595 are payable in full by the Respondent.
2. The file for the County Court proceedings will be returned to the court for it to deal with the issues of costs and interest.
3. The Service Charges for the years 2020 to 2023, as per the Applicant's application to the tribunal dated 18 May 2023 are reasonably incurred, reasonable in amount, and payable in full by the Respondent.

Background

4. The Respondent's flat is contained within a substantial purpose-built block which is part of a larger estate. The estate was built, we think, in or about 2003 / 2004.
5. The Respondent's lease is dated 29 June 2006, the parties to that lease are the Applicant, Barratt Homes Limited and the Respondent herself. The lease is for a term of 155 years less three days from 1st of June 2004.
6. The Applicant issued proceedings against the Respondent in the County Court in May 2020 claiming;
Ground Rent and Service Charges - £13,146.21
Administration fees - £120.00
Interest - £1634.03
Costs (as Administration Charges under the terms of the lease) - £5,308.60

The Service Charges in question covered the period October 2014 to 31 March 2020.

7. Those proceedings were listed for trial in the County Court for 16 September 2021. On that day, the Court transferred the proceedings to this Tribunal.
8. In May 2023 the Applicant made an application directly to the tribunal to rule on the Service Charges for the period 1 April 2020 to 2023.
9. Directions on the matters were issued by the tribunal on 18 July 2023.
10. The tribunal's directions stated that the tribunal would deal with costs and interest that had been claimed by the Applicant in the County Court pursuant to the terms of the Respondent's lease given that these were Administration Charges and therefore within the tribunal's jurisdiction. At the final hearing, we decided not to deal with costs and interest and to leave those matters to the County Court.
11. The Defence filed by the Respondent in the County Court was brief and lacking in detail, it read as follows;

As I feel cannot [sic] trust that the charges are correct and fair I have requested copies of invoices from the Claimant's estates management office and a full breakdown of the charges.

This arises from a past situation where a Leaseholder Tribunal required the claimant to provide invoices and proof of charges for the demanded service charge debt. The claimant could not do so and was very economical with the truth, giving various excuses that did not stand up to scrutiny. Claimant

eventually withdrew the case. I want to ensure at this time all charges are correct and fair and for work actually carried out.

Earlier this year I offered to increase my monthly service charge payment. The claimant did not respond to my offer neither to accept or decline, or to enter discussion, but simply issued a court claim. I understand that it is the claimant's right to take the matter to court, but surely discussion would save time and money.

I must comment that these service charges for an out of London estate are extremely high. The services offered do not measure up to what the leaseholders are charged.

12. Given the lack of detail in the Defence, the tribunal's directions directed the Respondent to deliver to the Applicant:-

- The form attached to these directions, completed by the Respondent setting out in the relevant column, by reference to each service charge year:
 - the item and amount in dispute;
 - the reason(s) why the amount is disputed; and
 - the amount, if any, the tenant would pay for that item.
- **copies** of any **alternative quotes** or other **documents** (including any colour photographs) upon which the Respondent intends to rely
- a **statement** (if not already contained within the Respondent's comments in the schedule) setting out any other matters that the Respondent wishes to raise
- any signed **witness statements** of other witnesses upon whom the Respondent relies.

The Respondent's case

13. In general terms, the case put forward by the Respondent can be described as vague and without any supporting evidence. In the event, the Respondent failed to use the schedule attached to the directions to set out any specific challenges to the Service Charges. It was the Applicant who completed a schedule, in the form attached to the directions, summarising the Respondent's case and the Applicant's response to that case.

14. The Respondent's case, in response to the requirements of the directions, was set out in an undated statement which we reproduce below:

1. I am contesting all of the charges on the account apart from ground rent which is fully paid up to March 2023. It is not the first time I have queried service charges made by Millpond's managing agent. In a previous case Millpond and representative could not respond to the tribunal request for sight of documents of all the charges they were claiming. They were very economical with the truth then in the reasons given why the [sic] could not comply with Tribunal's order even to the point of claiming they only had two people working in their managing agent office when in fact they had eight. They eventually withdrew the case.

2. I have queried repeatedly the claim that there are cladding issues at Cityview. As stated before the claimants managing agent appointed a company AG Consultancy to carry out a survey for cladding on Cityview. According to the report by AG Consultancy there were no cladding issues in existence and the building was compliant with MHCLG. Millpond and its agents suddenly dispensed with the services of AG Consultancy, claiming AG did not have enough insurance. I am surprised that due diligence was not carried out beforehand to determine this fact. Apparently another company was appointed to carry out the same check on the building, but as leaseholder we are not allowed to see this new report. Yet, there has been [sic] charges for Waking Watch on our accounts, charges for an apartment rented for the waking watch personnel. Other leaseholders have requested a copy of this new report and have been turned down. Although a waking watch team was installed, in most cases when the fire alarm would go off, especially at night, it was the leaseholders who would contact the fire brigade, not the Waking Watch. So what was the purpose of waking watch?

It seems that Barratt the, builders, are to pick up the cost of the supposed cladding works. Will all the charges made to the leaseholders for Waking Watch and other costs be refunded?

3. My defendant statement of 21st August had questions which the solicitor attempted to answer. Some of these answers had no bearing on what was actually happening at the estate.

I asked if work done on the site was checked and signed off after completion and was told staff from managing agent followed up when work is completed. I do not believe and accept this happens in all cases, if at all. Up to 2020 window cleaning was only done twice since I have been there, 2006, yet there is a charge every year. I visited the agent office in 2021 and asked about the window cleaning charges on the account. The manager of the office told me that no window cleaning had been done in 2019 because of COVID. Yet a charge for window cleaning was placed on the account for that. There is a small area at back of building for which we are charged garden maintenance fees. This area has never been maintained. I use these as examples to show that no one comes to check whether the work is carried out or not as claimed by the solicitor. Window cleaning was carried out in 2001 because I queried it. It was thought that in 2015 window cleaning was paid from sinking fund so it does not show up on service charge charges for that year. Why that year?

4. The lifts at the property are always breaking down. They are no longer fit for purpose. It is almost guaranteed that at least once or twice a month a lift engineer has to be called out. Yet although there is an insurance on the lifts, although we have a sinking fund the lifts have not been replaced. Yet, according to the solicitors e-mail dated 30th April 2021 money from sinking fund was used to replace carpets. I would have thought repairing a lift which could be dangerous for its users is more important. The situation with the lifts has been going on for years, yet it seems the agent is quite content to continue using a company that seems incompetent. There has been refurbishment carried out on one of the lifts recently. This lift broke down shortly after work was carried out.
5. I visited the agents office in 2021 to see the invoices that I was being charged for. I was presented with invoices from suppliers that had been paid, but no purchase order details. When I tried to make a query regarding an invoice, I was told that I had to speak to the solicitor. I came away feeling as though it was a waste of my time. The solicitor's answers did not explain much and I was sent a lot of documents that I had already got copies of.

6. I feel that Millpond is not opened [sic] to queries about charges they send to leaseholders. It appears we should just accept whatever is said without question. My reason to objecting to all the services is that I no longer trust Millpond and its agents to be open, honest and transparent to its leaseholders.

15. The Respondent also made a witness statement, again undated, and in so far as it raises objections to the service charges, it reads as follows;

As previously stated in my defence, I am disputing charges because I need a clearer picture of these charges. I visited the office of the Claimant's Managing Agent with the view of seeing the original documents that make up the charges. This visit did not, as I had hoped, provide the proof needed that all the charges were transparent and above board. I went thru the file for 2014 and there [were] invoices that were not clear. [paragraph 2]

It was difficult to understand some of the charges as there were no back up purchase order details. For example there was an invoice from P&H Rayleigh dated 28/11/14 for £6400, which although work itemised, work could have been done anywhere. No idea why work was ordered and by whom. Another invoice from DG Electrical dated 15 December for £3114 which just gives a total for 24 lights @ but does not give the individual cost of each light. There are quite a few invoices from Anchor to do with fixing the main entrance doors. It would appear that Anchor was fixing the same problem almost every month..... I would question the use of EON as a utility supplier when it is well known that this company's charges are very high. [paragraph 3]

I did not see the breakdown of the reserve/sinking fund and how it is used. [paragraph 4]

There is no explanation of the charges for window cleaning that were never carried out, especially in 2019/2020. [paragraph 5]

The landscape charges for Cityview are a joke. When and where is this landscaping done? [paragraph 6]

An Anchor invoice for investigation to CCTV fault even though we pay £12,000 for maintenance each year. The invoice states that the monitors on CCTV were in poor condition and giving poor quality pictures. That Anchor was instructed to take details and quote for system upgrade. So why are we paying £12,000 for maintenance?. [paragraph 7]

16. The Respondent did not keep any contemporaneous records or other notes regarding the matters she complained of. For example, she was unable to give any dates for the left breakdowns or any dates or periods for the lack of window cleaning. The Respondent, in the hearing before the tribunal, referred to having inquired about other electricity companies' charges and stated that these were considerably cheaper than EON. However, she did not have anything in writing to support this and conceded that the quotes that she was able to get would be for individual domestic use rather than for estate or commercial use. Again, in respect of the objection regarding landscaping, there was no detail as to what the area consisted of, what was not done and what should have been done in respect of its maintenance.

The Applicant's case

17. We are satisfied from documents in the hearing bundle and the comments of the Respondent that; (a) the Respondent was afforded full access to the Service Charge accounts and documents, and that; (b) the Applicant has gone to some lengths over the years to respond to the Respondent's queries and objections.
18. As stated above, the Applicant put the Respondent's objections to the service charges, and its responses to those, in the form of a schedule. A representative from the Applicant's managing agent, Mr Sullivan, attended the hearing and gave evidence to supplement the Applicant's responses to the points raised by the Respondent.
19. We set out below a summary of the points raised by the Respondent and the Applicant's response.
20. *Invoice from P&H dated 19/11/14 for £6,400:* The Applicant explained that this related to a leak under the main foyer causing the floor to collapse.
21. *Invoice from DG Electrical dated 15/12/14 for £3,114:* This invoice relates to a different part of the estate that was not charged to the Respondent's service charge.
22. *Use of EON as a utility supplier:* There was no evidence presented by the Respondent that the Applicant could realistically respond to.
23. *Invoices from Anchor for fixing the main entrance doors:* These were invoices relating to the rolling doors in the underground parking, and were not charged to the Respondent's service charge.
24. *Invoice from Anchor regarding investigating CCTV fault:* The charge of £12,000 is in fact made by the local authority for the monitoring of CCTV cameras. This matter results from an agreement with the local authority when the estate was first developed. There is a walkway running through the estate leading to the local railway station and the CCTV cameras in question monitor that walkway.
25. *Landscaping charges:* The Applicant stated that landscaping takes place monthly. There was little else that they could add given the lack of any detail in the Respondent's objections.
26. *Window cleaning charges:* The Applicant's response was that windows were cleaned once a year in 2015, 2018, 2019 and 2020, and it was only in these years that the charges were included in the budgets. Window cleaning was recommenced in later years due to leaseholder demand.
27. *Waking watch charges:* The Applicant explained that this was recommended by the Fire Brigade as a fire safety measure and that the

costs of this were being met by the developers rather than the leaseholders.

28. *Lift charges:* It was explained by the Applicant that the lift breakdowns were caused by wear and tear, or misuse, and so not a matter for the original developer or for an insurance claim. Two lifts have been replaced as it was no longer economical to continue to maintain the original lifts.
29. *Report on fire safety:* A report was commissioned regarding fire safety and compliance. It appears, according to the explanation from Mr Sullivan, that some of the report was unusable due to the company producing the report not being sufficiently qualified to do the job. Mr Sullivan explained that only part of the costs of that report were paid. He considered that the part-payment was properly made and charged to the leaseholders as some of the report could be used and that part would have been required in any event, regardless of the failings of the building so far as fire safety was concerned.
30. *Inspection and checking of works:* The Respondent had complained that there was no evidence of the checking of works that were carried out. This presented something of a problem for the Applicant given that there was no context to this challenge, for example, the Respondent was unable to point to any works that went unchecked and which were not up to a reasonable standard. All the Applicant could say was that there were two concierges on site and part of their responsibilities would be to check in contractors and to check that the works had been completed.
31. *Purchase order details:* The Respondent was concerned generally that she could not see details of the ordering of works, all she could see was the invoices. Additionally, she was not clear on the signing off of those invoices. Again, the Respondent could not point to individual works or services that had not been properly carried out or done. So far as the ordering of works was concerned, we could not see what point was being made by the Respondent in terms of payability of Service Charges. As to the signing off of invoices, we could clearly see from invoices in the file that they had stamps showing a process of signing off and assigning to the various categories of Service Charge.

Conclusions and decision

32. The way in which the Respondent presented her case caused the Applicant some difficulties in trying to formally respond and similarly caused problems for the tribunal in trying to ascertain the details of objections and the evidence for those objections. The final hearing at the tribunal offices proceeded through the morning and into a part of the afternoon, and much of that time was spent trying to put some detail on the Respondent's case.
33. Insofar as the Respondent presented any meaningful case, we are satisfied from the Applicant's written and oral evidence that none of the objections to the service charges could result in a finding that those

service charges were either unreasonable in amount or unreasonably incurred.

The County Court claim

34. We were informed at the hearing by the Applicant that, of the service charges claimed in the County Court proceedings, there remained the sum of £11,493 outstanding. Regardless of whether or not that figure is correct, we have found that all service charges levied over the years in question are payable by the Respondent.

The Tribunal application

35. The tribunal finds that all of the Service Charges for the years in question, those being 2020 - 2023 are reasonably incurred and payable by the Respondent.

Deputy Regional Tribunal Judge Martyński

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 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).