



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

Tribunal Case Reference : LON/00BE/LSC/2021/0176

Property : York Mansions, Browning Street,
London SE17 1LP

Applicants : Stuart Whatton (Flat 5)
Denise Davey (Flat 9)

Respondent : Browning Street Management Ltd

Representative : Mr Stephen Wiles, Prime Property
Management

Type of Application : Payability of service and administration
charges

Tribunal : Judge Nicol
Mr JA Naylor FRICS

Date and venue of Hearing : 26th June 2024
10 Alfred Place, London WC1E 7LR

Date of Decision : 1st July 2024

DECISION

- (1) The Tribunal records the following:
- (a) The First Applicant cannot challenge items 1 to 8 on the Scott Schedule because they have already been determined by the judgments issued by the County Court Money Claims Centre on 9th September 2020 (claim no: G88YX500) and 12th April 2021 (claim no: G95YX792):
- (i) The half-yearly service charges for 25/03/18 (£420), 25/09/18 (£550), 30/03/19 (£550), 30/09/19 (£550), 20/03/20 (£566.69) and 20/09/20 (£566.69);
- (ii) The statement of account for 29/01/20 (£1,405);

- (iii) The Flaxfields Admin Charge 01/05/20 (£96); and
 - (iv) The Flaxfields Referral Fee 18/05/20 (£144).
- (b) The Respondent has conceded that items 7, 8 and 20 on the Scott Schedule are not to be charged to the Second Applicant and she will receive full credit:
- (i) The Flaxfields Admin Charge 01/05/20 (£96);
 - (ii) The Flaxfields Referral Fee 18/05/20 (£144); and
 - (iii) Charges from 23/10/23 (£1,370.50).
- (c) The Respondent has conceded that their respective proportions of items 21-26 and 30 on the Scott Schedule are not to be charged to either Applicant and they will receive full credit:
- (i) Maintenance in respect of Interior & exterior redecoration 22/02/16 (total cost £3,250);
 - (ii) Lincoln carpets invoice 18/04/16 (£2,750);
 - (iii) JG Painter & JG Express Ltd invoice 01/06/16 (£1,584);
 - (iv) Air Blue Lets Invoice, 30 Dec 2016 (£360);
 - (v) James Greenshields invoice 16/5/19 (£1,000);
 - (vi) Payment to James Greenshields 2020 (£3,834); and
 - (vii) Prime Invoice for Major Works 10 Jun 21 (£15,158.45).
- (2) The Tribunal has determined that the following service charge items are not payable:
- (a) £1,350 of the annual fee of £1,800 of the then agents, Kings & Marsh, invoiced in November 2019 (item 27 on the Scott Schedule); and
 - (b) VAT on quarterly bank fees (28B, 28G, 28L, 28Q), postage stamps (28F, 28K, 28P) and lease downloads (28H, 28T, 28V, 28W, 28X).
- (3) The Tribunal has determined that the following service charge items are payable:
- (a) Flaxfields management fees (items 28A, 28E, 28I, 28O, 28U and 28Y on the Scott Schedule);
 - (b) Various maintenance charges (28C, 28M, 28N, 28R, 28S, 28Z, 28ZA); and
 - (c) Company stamp (28D).

- (4) The Companies House fees and fine (items 28J and 29 on the Scott Schedule) are charges to the Respondent company, not service charges, and so the Tribunal has no power to rule on their reasonableness or whether they are payable by the Applicants as members of the company.
- (5) The Tribunal orders under section 20C of the Landlord and Tenant Act 1985 that the Applicants should pay no more than 80% of their share of the Respondent's costs of these proceedings through the service charge.
- (6) There is no order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 because the Respondent stated that they did not intend to serve demands for payment of their costs on the Applicants outside the service charges.
- (7) The Respondent shall reimburse the Applicants their Tribunal fees of £300.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicants are the lessees of two of the 10 flats at the subject property. The Respondent is the management company for the property, all lessees being members (including the Applicants), and their managing agents are currently Prime Property Management.
2. The Applicants applied on 28th April 2021 for determinations under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the reasonableness and payability of service and administration charges.
3. The case was listed for hearing on 29th April 2024. The attendees were:
 - The Applicants;
 - Mr Bruno Watson, providing support to the Applicants; and
 - Mr Stephen Wiles, representing the Respondent.
4. Unfortunately, for the reasons given by the Tribunal in its written decision of 30th April 2024, the hearing could not go ahead and it was adjourned on further directions to 26th and 27th June 2024. The hearing went ahead, attended by the same people, but was completed on the first day.
5. The hearings have been conducted using reasonable adjustments for the Second Applicant, namely that they were recorded in case she wished to hear or read back the proceedings at a later date and regular breaks were taken, at least every 25 minutes and lasting over 5 minutes each.
6. The Applicants had prepared a revised electronic bundle of 567 pages for use at the hearing but were unable to incorporate everything due to

technical difficulties and so there were also two separate documents, namely the service charge accounts for the year ended 31st March 2021 and a copy of the lease for Flat 5. The Applicants also provided a skeleton argument.

7. The key document in the bundle was the Scott Schedule. In accordance with the Tribunal's directions, the Schedule set out the service charge items disputed by the Applicants and, in a separate column, the Respondent's responses. The items were numbered 1-30 but there were two adjustments:
 - (a) As a result of the Tribunal's decision of 30th April 2024, items 9-19 were deleted; and
 - (b) Item 28 was supplemented by challenges to 27 charges designated 28A-28ZA.
8. This case has a long history, with the Applicants having a number of grievances as to the way the Respondent company has been run over the years, particularly by Mr James Greenshields, a fellow lessee and director (at times the sole director) of the company, and Flaxfields, the managing agents in 2020/2021. The Tribunal intends no disrespect to either Applicant or the validity of their grievances but the majority of that history is irrelevant to the determination of the issues which are within the Tribunal's jurisdiction under section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal strongly recommended to the Applicants at both hearings that they should take legal advice if they wished to pursue any further remedies.
9. By the time of the final hearing, the Applicants had narrowed their challenges to the items on the Scott Schedule, many of which may be grouped together. Each group was considered in turn at the hearing and is now considered in turn below.

Items 1-8 and 20

10. The managing agents have changed a number of times over the years, from Yates to Kings & Marsh in 2016, to Flaxfields in 2020, and most recently to Prime in 2021. The Applicants allege that they have not been provided with statements of their respective service charge accounts during that time. The First Applicant, Mr Whatton, sought to compile his own statement showing service charges demanded and sums he had paid towards and in addition to them. While he admitted to having arrears at times, by his arithmetic, he had been overcharged. In particular, he argued that his payments meant that he should not have been considered in arrears in respect of the half-yearly and other service charges at items 1-6 of the Scott Schedule or liable for the administration charges at items 7 and 8 which were incurred in chasing the alleged debt.
11. However, in the meantime, the Respondent had pursued the arrears through the county court and obtained default judgments against the First Applicant on 9th September 2020 (claim no: G88YX500) and 12th

April 2021 (claim no: G95YX792). The Respondent asserted that items 1-8 came within those judgments and so could not be the subject of an application to the Tribunal in accordance with section 27A (4)(c) of the Landlord and Tenant Act 1985. The Tribunal asked the First Applicant what his response was to that. He paused but eventually reluctantly conceded that he had no answer and had to accept that he could not pursue those items.

12. Items 1-6 did not relate to the Second Applicant but she was subject to the same administration charges in items 7 and 8. She was also subject to a further administration charge listed at item 20 in the Scott Schedule. Mr Wiles conceded that the Respondent would not pursue the Second Applicant for these items and that she would receive a full credit for them.

Items 21-26 and 30

13. The Respondent conceded that the Applicants would not be charged in relation to maintenance matters at items 21-24 of the Scott Schedule and payments to Mr Greenshields at items 25 and 26, and that they would each receive a full credit.
14. Further, the Respondent had commenced consultation for a major works programme and had demanded service charges in advance to pay for it (item 30). However, the works had not gone ahead and Mr Wiles conceded that the consultation was somewhat “stale”. The Respondent intends to re-start the whole process and, in the meantime, will credit the Applicants’ accounts with their share of the charges imposed so far.
15. The Applicants said they regarded themselves as acting on behalf of their fellow lessees and asked if the Respondent’s concessions and any favourable findings by the Tribunal could be extended to all the lessees. However, the Tribunal can only make a decision in relation to service and administration charges involving the parties to the application. Since the other lessees were not parties, the Tribunal has no power to determine any of their liabilities.

Item 27

16. Kings & Marsh’s appointment as managing agents was terminated in January 2020. However, they had charged their full annual fee of £1,800 in November 2019. The Applicants argued that, at most, it was only reasonable for Kings & Marsh’s charges to reflect the two months’ service and a one-month termination period, i.e. £450.
17. Mr Wiles admitted that Kings & Marsh were paid their full annual fee despite being the agents for less than one quarter of that year. He said that they were not going to return any part of the excess fee. The Tribunal put to Mr Wiles that terminating Kings & Marsh for what was, in effect, an additional charge of £1,350, required some form of justification. He was unable to put forward any reasons for their termination, let alone the manner or timing of it. In the circumstances, the Tribunal had no real

choice but to determine that the charge of £1,350 was not reasonable or payable.

Items 28 and 28A-28ZA

18. During his time as director, Mr Greenshields fell into arrears with his service charges. The Applicants argued that this disqualified him from being a director so that all acts of the company derived from any instructions from him while purporting to be a director were void. Such acts included the appointment of Flaxfields as managing agents (which they alleged required the head lessees' approval) and, following from that, their management fees and charges they incurred as listed at items 28A-28ZA of the Scott Schedule. They also alleged that there was explicit collusion between Flaxfields' Financial Director, Mrs Sarah Coles, and Mr Greenshields to falsify accounts and defy accounting conventions.
19. The Applicants were unable to provide sufficient evidence, law or other authority for their propositions. They pointed to the Respondent's Articles of Association where there were provisions for depriving members of a vote at AGMs when they were in arrears (clause 26) and for vacating the office of director when they cease to be a director under statute or become prohibited by law from being a director (clause 41(a)). However, there was no provision for a lessee's appointment as director to be voided when they incurred arrears.
20. The Tribunal pointed out that an act of a company is not necessarily voided simply by reason of being ultra vires. The Applicants accepted this but relied on *GHLM Trading Ltd v Maroo* [2012] EWHC 61 (Ch), per Newey J at [170]-[171], for the proposition that such an act would be void if the other contracting party knew of its ultra vires nature. They pointed to evidence, in the form of emails from Flaxfields, which appeared to show that they knew at some point after their appointment that he was in arrears. They argued that the appointment of Flaxfields was void but, quite apart from failing to show that Mr Greenshields was acting ultra vires, there was no evidence to show Flaxfields knew this at the time they entered into their management contract.
21. The fact is that many of the Applicants' complaints about Mr Greenshields are simply not relevant to anything that the Tribunal has the power to determine. The Tribunal is not generally concerned about a company's compliance with companies law which is better determined in the relevant jurisdiction. The Tribunal doesn't rule out the possibility that a service charge could be held not to be payable by reason of a company incurring it while acting ultra vires but any such allegation would need to be soundly based in evidence and legal authority. The Applicants did not get close to providing sufficient evidence or legal authority to establish their allegation that Mr Greenshields's defaults resulted in service charges not being payable.
22. The Tribunal went on to consider the further challenges to the items at 28A-28ZA of the Scott Schedule on their own merits.

23. The Applicants challenged Flaxfields management fees (28A, 28E, 28I, 28O, 28U and 28Y) on the basis that they had already been charged for Kings & Marsh's management fees over the same period as considered in relation to item 27. However, since the Tribunal has determined that item 27 is not payable in the sum of £1,350, there is no double-counting and Flaxfield's are the only management fees for that period.
24. Flaxfields purported to charge VAT on quarterly bank fees (28B, 28G, 28L, 28Q), postage stamps (28F, 28K, 28P) and lease downloads (28H, 28T, 28V, 28W, 28X), despite their all being VAT-exempt items. Mr Wiles said Prime did not charge VAT on such items and he knew of no justification for doing so. Given the small amounts involved, he was prepared to accept that they were not payable. In the circumstances, the Tribunal so determines.
25. The Applicants challenged various maintenance charges (28C, 28M, 28N, 28R, 28S, 28Z, 28ZA) simply on the basis that the invoices did not provide more detail. They did not dispute that the relevant work had been carried out, nor its quality. In relation to pest control (28ZA), the invoice referenced the Rude 'n' Boomin café in the commercial part of the building on the ground floor but pest control is for the whole building and the reference to one part of it does not take it outside the service charge. In the circumstances, the Tribunal is not satisfied that there are any grounds for challenging the payability of these items.
26. There was a small charge for a company stamp (28D). The Applicants had no reason for objecting to this and the Tribunal is satisfied that it is reasonable.

Items 28J and 29

27. The lessees of the subject property, including the lessees, each have two roles in relation to its management, namely as both lessees and as members of the Respondent company. As is fairly common due to its convenience, it appears that some items which exclusively relate to the costs of running the company have been included within the service charges rather than invoicing everyone separately for each of being a lessee and a member. Items 28J and 29 on the Scott Schedule are fees and a fine imposed in relation to the Respondent's filings at Companies House. These are charges for the Respondent company and they are not service charges within the meaning of the lease or the statute. Therefore, the Tribunal has no power to rule on their reasonableness or whether they are payable by the Applicants as members of the company.

Costs

28. In their original application, the Applicants sought orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that they should not have to pay the Respondent's costs of the proceedings. They also sought reimbursement of their Tribunal fees of £300.

29. Mr Wiles explained that the Respondent had incurred costs and would be putting them through the service charges so that each Applicant would be liable for their proportion, 10.42%.
30. The Applicants have failed on the majority of issues they raised but also obtained meaningful concessions which it is unlikely they would have obtained without bringing their case to the Tribunal.
31. Both parties complained about the manner of the other side's communication which each says has unnecessarily prolonged the dispute. The Applicants asserted that they had asked for information, both as part of the disclosure required by the Tribunal and outside, both before and after the proceedings were started. They said that the information should have been easily provided and ascribed dark motives to the Respondent and their agents for not doing so.
32. Mr Wiles, on the other hand, said that the material sought by the Applicants was so extensive and expensive to collate that it was unreasonable of them to ask for so much. The Tribunal can understand Mr Wiles's complaint to a certain extent when looking at the Applicants' list, running to several pages, of material they said should have been disclosed – this included every single invoice over a substantial period. The Applicants believe they have good grounds to question the Respondent's management and do not trust them but the Tribunal proceedings are not an opportunity to carry out a full audit in the hope of finding fault. Mr Wiles says he has disclosed everything he has.
33. In the Tribunal's opinion, the Applicants would have found it easier to moderate their requests for information in the context of full legal advice as to their remedies in relation to all their grievances, not just those brought to the Tribunal.
34. In the circumstances, the Tribunal has concluded that it is just and equitable that the Applicants should pay no more than 80% of their share of the costs through the service charges but that they should also be reimbursed their Tribunal fees of £300.

Name: Judge Nicol

Date: 27th June 2024

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

- (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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the

- application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) 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.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 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.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.