



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

**Case Reference** : **LON/00BE/LSC/2021/0031**

**HMCTS Code** : **VCVP REMOTE**

**Property** : **Flat 9, Tower View, 171 Tower Bridge Road,  
London SE1 2AW**

**Applicant** : **Ms Rajeshree Shivaji Bhosle**

**Representative** : **Mr Ashpen Rajah, Counsel instructed by  
Forsters LLP**

**Respondent** : **Assethold Limited**

**Representative** : **Mr R Gurvits of Eagerstates Limited (Managing  
Agents)**

**Type of Application** : **Application for determination of the  
reasonableness and pay ability of service  
charges**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr A Fonka**

**Date and venue of** : **7<sup>th</sup> April 2022**

**Date of Decision** : **20 April 2022 as amended 27 April 2022**

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**DECISION**

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## **COVID-19 PANDEMIC: DESCRIPTION OF HEARING**

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVP Remote. A face-to-face hearing was not held because it was not practicable and no-one requested same.

The documents to which we were referred to are contained in two bundles totalling 554 pages, many duplicated, the contents of which we have noted.

**“We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph 35 of our Decision dated 20 April 2022 . Our amendments are made in bold. We have corrected our original Decision because the existence of the authority from Northgate Property Development Limited was not before the tribunal at the hearing, when it should have been.**

**Signed:** *Judge Dutton*

**Dated: 27 April 2022**

## **DECISIONS OF THE TRIBUNAL**

1. The Tribunal determines that the Applicant should pay to the Respondent in respect of administration charges arising from the non-payment of an estimated interim service charge due on 1<sup>st</sup> July 2019 the sum of £314.40 for the reasons set out below.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of proceedings may be passed through to the lessees who indicated they wished to be a party in this regard.
3. The Tribunal makes an order under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the tenant's liability to pay any litigation costs incurred in respect of proceedings before this Tribunal.

## **BACKGROUND**

1. On 22<sup>nd</sup> September 2021 the Applicant Ms Bhosle applied to the Tribunal both for a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) and schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The Applicant also sought an order under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the 2002 Act in respect of the Respondent's costs.
2. The Applicant is the tenant of Flat 9, Tower View, 171 Tower Bridge Road, London SE1 2AW (the Property) under the terms of a lease granted on 29<sup>th</sup> November 2006 the contents of which we will refer to as necessary in the course of this decision. The Respondent is the freeholder of the Property represented by Eagerstates Limited. In the application the Applicant sought to challenge the service charge years commencing 1<sup>st</sup> January 2018 to 31<sup>st</sup> December 2021. The application also

listed the number of the leaseholders who she wished to include for the purposes of taking advantage of any order made under section 20C. On that point, we should say that there was a letter of authority received in respect of the tenants. This seemed to cover all but the lessees of Flats 2 and 8.

3. The application relates to what are perceived to be errors in the accounting practices of the Respondent leading to uncertainty as to sums that may or may not be due and owing. This applied for each of the years in dispute.
4. There are a number of directions that have been amended during the course of these proceedings, the last being on 24<sup>th</sup> March 2022, which changed the dates upon which certain papers were to have been lodged.
5. It is appropriate at this time to deal with an early application made by Mr Gurvits concerning the late delivery of the Applicant's bundle, which arrived the day before the hearing. Although Mr Gurvits took no particular issue with the bundle's late delivery, he did take issue with the inclusion therein of the Applicant's reply, which was at page 207 onwards of her bundle. Whilst this document is dated 1<sup>st</sup> April it was not sent to the Tribunal until the 4<sup>th</sup>, which is some three days after the deadline provided for in the latest amended directions. Mr Gurvits did not receive it until that day and did not have time to respond and in the event objected because it was outside the parameters of the time allowed for the lodgement of this document.
6. We will deal with that point now. The directions provide that any reply to be sent, which was not obligatory, should be done by 1<sup>st</sup> April. The bundles had to be lodged by the 5<sup>th</sup> April. In those circumstances having heard all that was said by Mr Rajah for the Applicant and Mr Gurvits for the Respondent, we conclude it would be inappropriate to allow the Applicant to rely on this document. Accordingly, it was not considered by us in determining this matter.
7. Within the bundle there were a number of documents. One was in effect a Scott Schedule setting out the items that were in dispute and the response given to that by the Respondent. This highlights the concerns of the costs sought in respect of a letter before claim, (see below) which totalled £2,165.70. It is right to say that the schedule does not indicate that there is a challenge to a specific service charge item.
8. Within the bundle we also had the Applicant's statement of case with exhibits including her witness statement, the Respondent's statement of case again with exhibits, skeleton argument lodged by Mr Rajah which we had noted, a schedule purporting to show the correct service charge position prepared by the Applicant, some correspondence and copies of the various service charge accounts. It is noted that in respect of the service charge year there appeared to be a number of versions of the accounts.
9. By way of comment, the Respondent's bundle which ran to some 254 pages by and large contained everything that was in the Applicant's bundle and it is a pity therefore that we were in receipt of both although to be fair to the parties at the hearing we were by and large directed to the Applicant's bundle and any reference to documents and page numbers that we cover in this decision are by reference to that bundle.

10. We should also record that at the start of the hearing Mr Gurvits indicated he was in some discomfort. We will not go into the whys and wherefores of this but he did tell us that he had a doctor's appointment later in the afternoon of the hearing. At one point during the course of the hearing he asked for the matter to be stopped but seemed able to continue and was in a position to address all matters of relevance for which we are grateful.
11. At the commencement of the hearing Mr Rajah referred to his skeleton argument. He told us that for the year ending 2017/18 it appears to have been agreed that there was a sum due of 502.08 by the Applicant but there was a good deal of confusion as to what sums had been carried forward and what had not.
12. It is fair to say that this case did not suffer from a lack of paperwork. However, the issues boiled down to this.
13. On 21<sup>st</sup> August 2019 Scott Cohen Solicitors wrote to the Applicant in a letter headed Letter Before Claim (LBC) setting out that they were pursuing possible breach of the lease leading to a forfeiture. It was said that the sum outstanding at that time was £3,330.62 which appeared to include the fees associated with the alleged failure by the Applicant to make her 'on account' payment on 1<sup>st</sup> July 2019. The LBC did indicate that if payment was made within 30 days and proceedings were not required, the sum to be paid could be reduced by £805. The LBC went on to include a reply form and also had annexed to it a statement of account showing the following charges in respect of the alleged failure by the Applicant to make the payments due under the terms of the lease on the due date. These were as follows:
  - 25.2.19 Interest £9.65
  - 24.6.19 Interest £11.61
  - 8.8.19 Notice of proceedings £120
  - 8.8.19 Interest £11.40
  - 19.8.19 Interest £3.04
  - 19.8.19 Admin costs £360
  - 19.8.19 Solicitors costs £600
  - 19.8.19 Admin costs £240
  - 19.8.19 Solicitors costs court summons £600
  - 19.8.19 LR fee £5
  - 19.8.19 Court fee £205

Total £2,165.70

This is the sum that is in dispute but as we heard from the Applicant, there is concern that this amount has been duplicated in later years and that in addition there is an additional sum of £744.14, (after credit is given for £300 ground rent) which appears in a schedule of service charge and ground rent demands prepared by the Applicant at pages 233 to 235 of the bundle for the year 2021/2.

14. The Applicant, who is a qualified accountant, has suggested that in the accounts for 2019/20 there appears, on her assessment, to have been a double counting of the costs for failing to comply with the terms of the lease of £2,165.70 and that is

shown in her workings for that year. The period prior led to the agreed sum of £502.08 being owed by the Applicant.

15. Accordingly, as we have indicated above the position is this, there is a challenge to the £2,165.70 on the basis of whether or not these are properly payable as administration charges as set out in the LBC. There then follows an allegation that this sum has been duplicated and further that a sum of £774 appears in the accounts for the year ending December 2021 for which there appears to be no explanation. We asked Mr Gurvits to confirm what he considered the current level of service charges owing to be, which apparently stand at £3,731.41.
16. We have considered the witness statement of the Applicant, which is in detail and that of the Respondent, which is not. The Respondent's reply to this application indicates that all payments have been taken into account and that the accounting method is quite clear. In the Respondent's view, the issues in the case began in 2019 and have run since then. The Respondent's argument is that the Applicant failed to make a payment on account for the second half year for 2019 and as a result the LBC was sent, which gave rise to the fees which are now the subject of these proceedings.
17. It is right to say, however, that the Respondent gave no explanation as to the concerns raised by the Applicant in respect of the possible double counting of the sum of £2,165.70 or where the additional sum of £744.14 had come from. The response was essentially that this was an accounting matter over which the Tribunal had no jurisdiction and that once we had made our decision on the question of the costs arising from the LBC, everything else would fall into place.
18. As evidence of some of the uncertainty on the accounting matters, Mr Rajah took us to a statement of account which was prepared we understand by Mr Gurvits on or about 25<sup>th</sup> March this year, which it was said contained a number of errors. Mr Gurvits said that he had prepared this account and he accepted there were some items in error. Two particularly were drawn to our attention, one was that under the debit column a credit of £1,467.86 was included and further that a payment made in March of 2020 in the sum of £220 had not been included. If one took these changes into account, it appeared that far from having a balance outstanding of £6,166.14 it reduced to £3,010.42. This Mr Rajah suggested to us that this was indicative of the accounting practice of the Respondent, which had caused the Applicant to question the accounts for each year.
19. In respect of the LBC to which we have referred above, it was suggested by Mr Rajah that it did not constitute a demand. It was said that the sums claimed were not validly demanded, that there was no explanation of the terms of the lease that were being sought and that the demand which led to the LBC was in any event in advance of the due date, which was the 1<sup>st</sup> July 2019. This early demand was relevant in respect of the non-liability of the Applicant for interest. It does not appear to be disputed by the Applicant that no payments had been made after 1<sup>st</sup> July. Asked why this was the case she said that she had given birth on or about 1<sup>st</sup> July 2019 and that this had taken up much of her attention. However, it was confirmed to us that upon the production of the actual accounts the sums due had been settled promptly by her.

20. Mr Gurvits for the Respondent relied on the LBC as constituting a demand for the payment of those monies set out in the statement of account dated 19<sup>th</sup> August 2019 annexed thereto. This document included a reply form, which the Applicant had completed and also the statutory wording under both the 1985 and 2002 Acts.
21. The questionnaire that the Applicant had returned indicated that she had engaged with the Respondent's solicitors by completing this. Under the heading concerning liability she indicated that the sum owed would be dependent upon further information to be received. She also agreed to pay the sum of £200 per month until the dispute was resolved and attached emails confirming her involvement. There is produced at this time an email that is undated but has the reference of the solicitors, which seeks further information. One is that proof of the notice of proceedings dated 8<sup>th</sup> August 2019 was sent, as this is denied by the Applicant. There are also a number of issues raised and in the final point, a request to answer the question why proceedings are to be started when she has been in dialogue with Eagerstates concerning mistakes.
22. In conclusion, Mr Rajah sought orders under section 20C of the 1985 Act and paragraph 5 of schedule 11 to the 2002 Act. Mr Gurvits objected to these. He said that the basis of the application stemmed from the non-payment of the interim service charge in the summer of 2019. He denied that there had been any discussions concerning this and that the Applicant had made no payments for the July interim charge.
23. Mr Rajah responded to say that the Applicant had paid the actual charges when they were demanded but conceded that no payments had been made in the summer of 2019 onwards. He reminded us that the interim payment was not due until 1<sup>st</sup> July although it had been claimed in August that the demand appeared to indicate the period was June to December when it should be July to December and that throughout this period there were discussions between the parties.
24. The Applicant told us that she had not made payments on account because the dates were wrong and that she was engaging with Mr Gurvits about the problems on the account. In addition also it appears that there was the possibility of a right to manage application being made and she wished to determine the details of monies outstanding.
25. Mr Gurvits was asked by us whether he had considered reviewing the accounts before the hearing in the light of the questions raised by the Applicant. He said that he had considered doing so but he did not feel it necessary to carry out a review.
26. Finally, Mr Rajah asked us to make the orders under sections 20C and paragraph 5(11) because he believed there would be success in challenging the figures, that the conduct of the Respondent during the proceedings was poor and referred us to his skeleton argument in this regard. He said that the Applicant had had to repeatedly chase the Respondent for correct figures and even then no explanation was given by the Respondent as to the figures that were now the subject of these proceedings. He said that the Respondents had not engaged and instead had just said that the accounts would resolve themselves after this hearing. In a final rebuttal to this Mr Gurvits said that there had been multiple extensions sought by

the Applicant's solicitors. He did not consider that the Respondents were to blame and that their conduct had not been poor.

## **FINDINGS**

27. This case was perhaps made more complicated and difficult to follow than was strictly necessary. There is an 11-page skeleton argument, which we have considered, and in addition there is a detailed statement of case and a statement made by the Applicant.
28. It seems to us that there is no dispute now that as at 1<sup>st</sup> December 2019 the accounts were in an agreed order. The Respondent wrote to the Applicant on 2<sup>nd</sup> July referring to a demand dated 29 May 2019 in the sum £1,969.92 which included alleged arrears from a previous account of £733.92 and was said to represent the accounting period June to December 2019. The deadline for payment had been extended to 12<sup>th</sup> July 2019. At this stage we should say that the liability to make the payment arose on 1<sup>st</sup> July and there was 14 days grace. There then followed a notice of proceedings letter, which the Applicant denies receiving which was dated 8<sup>th</sup> August 2019 purportedly sent by email, but she said she did not get it, which again set out the sums due, which was the previous amount of £1,969.92 and £120 costs. It should be remembered that these were estimated service charge figures.
29. The relevant terms of the Applicant's lease are to be found in copies provided in both bundles. There are definitions of the block access area, internal common parts and so forth. The service charge is shown as being recoverable as rent and reference is made to the 5<sup>th</sup> schedule in the lease. In addition, under the heading Costs at paragraph 2.8 there is obligation to pay all proper and reasonable costs (including solicitors costs and surveyors fees and VAT payable thereon) incurred by the landlord in connection with the recovery of arrears of rent. On this point Mr Rajah argued that this application was not for the recovering of arrears of rent. Rather it was a claim brought by the Applicant.
30. In the schedule dealing with the service charges (the 5<sup>th</sup> schedule) it confirms that the service charge year is the first day of January ending on 31<sup>st</sup> December and the requirement the tenant would pay by equal half-yearly instalments on advance on 1<sup>st</sup> January and 1<sup>st</sup> July in each year the interim block service charge instalment. It is this alleged failure on the part of the Applicant to pay the summer estimated charge, which gave rise to the charges set out in the LBC.
31. We have considered the matter and it does seem to us that there is a breach by the Applicant in respect of her obligation to pay on account sums on 1<sup>st</sup> July in each year. However, we are concerned at the level of the charges which have been claimed from the Applicant in the LBC for as Mr Rajah said there has been no explanation given by the Respondent as to how these sums have been calculated, what the charging rates may be for the solicitors and of course include costs which clearly are not relevant in that they only arose if proceedings were commenced.
32. There are interest charges claimed in February and in June of 2019. We do not know how these arise. The liability to make the payment does not arise until 1<sup>st</sup> July and in those circumstances, we find that the earlier charges are not recoverable. We do not agree with Mr Rajah's view that the LBC does not constitute a potential

claim for administrative costs and clearly sets out in some detail by reference to the annexed statement of account how much those costs are but gives not explanation as to their basis.

33. We consider that there is some culpability on the part of the Applicant in that she offers £200 per month on the form that she returned with the LBC but so far as we are aware no such payments were made in this period. In those circumstances we conclude that the interest payments that post-date the 1<sup>st</sup> July of £11.40 and £3.04 are recoverable. The administration costs, solicitors' court costs, Land Registry fee and court fee are not recoverable. That leaves only the administration costs of £360 and the solicitors' costs of £600. A charge of £600 for an LBC seems to us to be excessive. We do not know what the solicitor's hourly charging rate is but doing the best we can we assess those costs at £200. In so far as the administration costs are concerned, there will have been some additional work engendered by the Applicant's non-payment, but a figure of £360 seems excessive particularly as an administration cost is subsequently claimed, although disallowed, of £240. Again, doing the best we can on the information available we allow £100 for this. Accordingly, the total sum that we find is due and owing by the Applicant is £314.14. The remaining costs claimed on the LBC we disallow.
34. We have also carefully considered the accounting schedules prepared by the Applicant at pages 233 to 235 in the bundle. On the face of it there would indeed appear to be double accounting errors concerning the sum of £2,165.70 and the inclusion of an additional £1,044.14, subsequently reduced by £300. We can see no justification for these sums and certainly Mr Gurvits was unable to explain these anomalies. Accordingly, in the absence of any evidence from the Respondent to support these two figures we find that they should be expunged from the accounts, which should be further reduced to reflect the amount we have allowed at paragraph 33 above. Hopefully, this will lead to accounts that are correct.
35. We turn then to the section 20C and the schedule 5 paragraph 11 claim. We find that there is a clear confusion on the part of the Respondent in relation to the accounts. It may well be that this is an accounting exercise that will become clear once this decision is promulgated. However, that does not excuse the Respondent's failure to engage in these proceedings in any truly meaningful way. It was as put to Mr Gurvits that a complaint could be levelled at him in that he had not taken the steps to review the accounting position before the hearing as this may well have avoided the need for the matter to come before the Tribunal. In addition, the Respondent has produced nothing to support these additional charges, which were set out in the Applicant's schedule of costs, which do not seem to be disputed. If it was a duplication, then Mr Gurvits should have been able to have resolved that. If it was not a duplication but was another cost, then Mr Gurvits should have been able to have produced evidence to support it. He had done nothing of the sort. He said this claim stopped in 2019 but he has not explained how the matter has arrived at the position in which we find today. His response that the accounts will resolve themselves does not assist. Hence, we conclude it would be just and equitable in the circumstances to make an order under section 20C preventing the Respondent from recovering the costs of these proceedings as a service charge against those parties who have served notice to join in the application, they being the lessees as set out under section 9 of the application concerning the provisions of section 20C **and Northgate Property Development Limited whose authority signed**



**by Maxwell Calverley on behalf of the company was sent to the tribunal dated 6 April 2022.** It should be noted that we are not aware of any authority from Helen Gary of Flat 2 ~~or Northgate Property Development Limited of Flat 8.~~

36. We consider also that it is appropriate, on the same basis as the s20C decision for us to make a finding that the costs of these proceedings are not relevant litigation costs to be recovered as an administration charge if the lease in fact allows same.

*Andrew Dutton*

Judge: \_\_\_\_\_  
A A Dutton

Date: 20 April 2022

**ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.