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

Case reference : **LON/00AH/LSC/2017/0356**

Property : **Flat 2, Dudley Court, 29 Howard Road, London SE25 5BJ**

Applicant : **David Hayden**

Representative : **Alan Jackson**

Respondents : **(1) Abbeyladder Ltd (freeholder)**
(2) Dudley Court Management (RTM) Ltd

Representatives : **George Ide LLP for the First Respondent**
Brethertons Solicitors for the Second Respondent

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

Tribunal members : **Judge S O'Sullivan**

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

Date of decision : **13 February 2018**

DECISION ON TRIBUNAL'S JURISDICTION AND NOTICE OF STRIKE OUT PURSUANT TO RULE 9

Decisions of the tribunal

- (1) The tribunal has no jurisdiction to entertain any of the service charges claimed in this present application; and
- (2) The tribunal therefore strikes out the application under Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The application

- (1) The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The tenant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.
- (2) The application is made on behalf of the applicant lessee by Mr Alan Jackson of Alan Jackson surveyors. The reasonableness of service charges is challenged for the period 2011 to 2017.
- (3) The first respondent, Abbeyladder Limited, is the freeholder of the property known as Dudley Court, 29 Howard Road, London SE25 5BU (the "Property"). The applicant is the leaseholder of Flat 2, Dudley Court, 29 Howard Road, London SE25 5BU (the "Flat"). Until 18 November 2009 Abbeyladder retained Hampton Wick Estates Limited as managing agents.
- (4) The second respondent, Dudley Court Management RTM Limited, became entitled to manage the Property (save for the collection of ground rent) from 19 November 2009.
- (5) The application was originally made by Mr Jackson on the basis of a power of attorney. However the applicant, Mr Hayden, is now resident in the UK once more and the reliance on the power of attorney is no longer needed. Mr Hayden attended the case management hearing and confirmed that Mr Jackson is authorised to represent him.
- (6) The grounds for the challenge are that in respect of the years 2011 to 2017 the applicant was not properly served with service charge demands at the address notified c/o Alan Jackson despite it being said that the address for service had been provided. The applicant also says that consultation was not carried out under section 20 in relation to major works. As far as the general service charges are concerned the applicant is unable to say what his specific challenges are given that he has not received details of the charges. The applicant is also concerned that payments have been requested from his mortgagor despite demands not having been properly made.

- (7) A case management hearing took place on 17 October 2017. At that hearing it became clear that there have been several sets of proceedings issued against the applicant in the county court although no details of these were available at the case management hearing. Counsel for the second respondent confirmed that she was instructed that proceedings were issued and it is thought judgments obtained in both 2010 and 2012. In addition proceedings were issued in 2017 in the sum of £6092 although it was not known which service charge years the latest proceedings were concerned with. Mr Jackson considered that there had been many more claims issued and that they may not be aware of many given that they were being served at the Flat at which the applicant was not resident rather than at the address provided for service.
- (8) The position in relation to the previous county court proceedings was very unclear. Where judgments had been entered for particular service charge years the tribunal would not have jurisdiction in respect of those periods. Where there were live proceedings in the county court likewise the tribunal would not have jurisdiction although the parties could apply for these to be transferred to the tribunal. Counsel indicated that the second respondent was likely to consent to such transfer. Accordingly the tribunal made directions for the issue of jurisdiction to be considered on the papers.
- (9) In accordance with those directions the parties served statements of case in relation to jurisdiction and the matter was considered on the papers on 13 February 2018.

The first respondent's case

- (10) The first respondent relied on written submissions dated 15 December 2017. As mentioned above the first respondent managed the Property until 18 November 2009.
- (11) The first respondent confirms that proceedings were issued against the applicant on 30 December 2015 in the sum of £3,943.44 with judgment being entered on 26 January 2016. A payment was received from Mortgage Express in the sum of £6938.46 on 21 September 2016. A statement of account attached to those proceedings showed that judgment was obtained in respect of historic service charges due as at November 2009 together with ground rent to the date of the proceedings.

The second respondent's case

- (12) The second respondent set out its case in submissions received on 15 November 2017.
- (13) It is stated that service charges are demanded on a half yearly basis in advance. Details of previous proceedings were summarised in tabular form and copies of proceedings attached which are summarised as follows;

Claim no	Issue date	Judgment	
OUDo1367	06/08/10	24/09/10	£3,674.19
21R61602	23/02/12	10/04/12	£1,515.43
3YM07504	20/06/13	05/08/13	£2,311.96
D32YM694	17/08/17	Live	

- (14) Judgement has been entered in the first 3 sets of proceedings with only claim number D32YM694 remaining live.
- (15) The following invoices have been the subject of the above county court judgments;
- a. 18/02/10
 - b. 21/01/11
 - c. 01/07/12
 - d. 22/01/13
- (16) Further, in any event, it is said that the service charges demanded on 18/02/10, 21/01/11 and 01/07/12 all fall outside the tribunal's jurisdiction as more than 6 years has expired since their demand.
- (17) It is said that the following invoices have not been the subject of a county court judgment and remain live. It appears the following invoices are all the subject of claim number D32YM694 in the county court;
- a. 10/06/13
 - b. 17/12/13
 - c. 16/06/14
 - d. 27/02/15
 - e. 29/06/15
 - f. 31/12/15
 - g. 11/04/16
 - h. 20/05/16
 - i. 22/06/16
 - j. 01/12/16
 - k. 13/03/17

- (18) The second respondent is content for claim number D32YM694 to be transferred to the tribunal.
- (19) The second respondent confirms that none of the county court judgements have been set aside or appealed and are therefore all valid final judgments. An application to set aside the judgment dated 5 August 2013 was not entertained as it was said Mr Jackson did not have the standing to make the application.

The applicant's case

- (20) The applicant made initial submissions in reply received on 30 November 2017.
- (21) The applicant acknowledges the claim numbers referred to in the second respondent's submissions and also makes reference to further proceedings case number B63YP476 which the applicant questions. It has since become clear that this claim was issued by the first respondent in relation to historic arrears and ground rent (see above). The applicant contends that the tribunal should resist an application for the claim to be moved outside of its jurisdiction. It is said that no admission has been made by the applicant that the charges were appropriate but rather concerns were raised in relation to the content of the accounts and "*illegal servitude*" of claims. In short the applicant says that he has never been validly served with any of the service charge demands which are the subject of the proceedings as they were served at the Flat rather than at the applicant's correspondence address.
- (22) The applicant made further submissions in reply to the first respondent's submissions on 5 January 2018. The applicant says that the first respondent has continued to make service charge demands after 2009 despite it no longer being entitled to manage the Property. A statement of account is attached to his statement. This does not have any form of heading or property address. It does however show periodic demands for service charges during the period 2012 to 2015.
- (23) The applicant also says he received no contact from the freeholder throughout this period and had no knowledge that proceedings had been issued. It is likewise said that the proceedings have not been served on the last known address despite them having been provided with a correspondence address.

The tribunal's decision

- (24) In this application the applicant challenges service charges for the years 2011-2017.
- (25) As the RTM Company took over management of the Property on 19 November 2009 there should, in principle, be no service charges demanded by the first respondent which relate to the years in challenge. This is confirmed by solicitors for the first respondent who

confirm that its management ceased on 18 November 2009. However it is confirmed that the first respondent remained entitled to collect ground rents. It is also confirmed that there were arrears on account on 18 November 2009 and that proceedings were issued to collect those amounts in 2015 with judgment being obtained on 26 January 2016 and a payment subsequently being made by the mortgage company.

- (26) The applicant says that the first respondent continued to collect service charges after 18 November 2009 and relies on a statement of account without a heading or property address. This bears no similarities to a statement of account attached to the first respondent's submissions and county court proceedings which gives the applicant's name and flat number and shows only ground rent on the account after November 2009 save for a credit on 1 October 2015 and an entry for legal fees on 7 July 2016, presumably in relation to the county court proceedings.
- (27) The tribunal has concluded none of the charges demanded by Abbeyladder are relevant to these proceedings as we are concerned only with the years 2011-2017. The tribunal can see no evidence that any service charges were demanded by the freeholder after 2009. If any service charges were demanded they have not been the subject of any county court proceedings.
- (28) The proceedings in the county court issued on 30 December 2015 sought judgment in respect of historic service charges due as at 1 July 2009 and ground rent up until 1 January 2016. Judgment was entered on 26 January 2016. In such circumstances the tribunal does not have the jurisdiction to revisit those charges and the applicant's only remedy would lie in an application to set aside in the county court.
- (29) As far as the charges post 19 November 2009 are concerned the applicant does not challenge the second respondent's account of the various claims in the county court. He does however appear to consider that despite judgment being entered in the county court in respect of some service charge demands, the tribunal would retain jurisdiction in relation to those amounts. The tribunal confirms that where service charges have been the subject of county court proceedings the tribunal does not have jurisdiction to revisit those sums, despite any grounds of challenge which the applicant may have. The applicant's only recourse lies with an application to set aside those judgments in the county court.
- (30) The tribunal has considered the various copy proceedings attached to the second respondent's submissions and is satisfied that county court claims have been made and judgments entered for invoices dated 18/02/10, 21/01/11, 01/07/12 and 22/01/13. The service charge years 2013 to 2017 (part) are all the subject of current proceedings under claim number D32YM694. The second respondent has indicated that it is content for that claim to be transferred to the tribunal.

- (31) It follows from the above that, as things presently stand, the tribunal has no jurisdiction to deal with either the historic service charges or those currently before the county court. Therefore the only appropriate step is to strike out the current tribunal application. This strike out is subject to the caveat that if there is a second service charge demand in 2017 which is not the subject of the county court proceedings and that invoice is disputed, the applicant may ask for the tribunal proceedings to be reinstated in respect of that invoice only.
- (32) The parties may decide to ask the court to transfer the proceedings to this tribunal. If that happens, the tribunal will, upon receipt of the transfer order and Court file, open a new file and make further directions in relation to this matter.
- (33) For the avoidance of doubt this file will be closed and the tribunal will take no further action in relation to this matter.

Name: Judge O'Sullivan

Date: 13 February 2018

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).

Appendix of relevant legislation

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.