

IN THE COUNTY COURT AT EDMONTON

CLAIM NO. FIAY03K2

and

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

CAM/00KG/LSC/2019/0053

Re 45 Stanford House, Tilbury RM18 8YP

Between :-

GLOBALMANOR LIMITED

Claimant

and

Olatunde OKEOWO

Defendant

JUDGMENT

1. The claimant is the freehold owner of a block of residential flats known as Stanford House, Princess Margaret Road, East Tilbury RM18 8YP and landlord to the defendant, the lessee of flat 45 Stanford House under a lease dated 18th October 1983 for a term of 99 years commencing on and from 25th December 1982.
2. As the long leasehold tenant of residential premises the defendant enjoys the protection of the Landlord and Tenant Act 1985 insofar as he is liable to pay service charges, but in fact while there is an issue about the length of time over which his arrears have accrued there is no dispute about the amount of his combined liability to pay ground rent and service charges, viz £2 973.50.
3. Upon seeing the words “service charges” the County Court at Edmonton transferred the case to the First-tier Tribunal (Property Chamber) at Cambridge, and directions for trial were issued on 27th August 2019. These pointed out that a tribunal judge was also a judge of the County Court and so could handle all aspects, sitting in both jurisdictions as necessary.
4. Had the County Court looked closer, however, it would have noted that there was no dispute about the amount of the arrears; only about how unreasonable the landlord was in adding another £2 000 or so to the figure for arrears, interest and costs already set out in the letter before action. As there is no issue about the arrears of service charge and ground rent (the latter an item within the exclusive jurisdiction of the County Court) the tribunal and judge hearing the matter decided that the outstanding issues, the major one being legal costs, could just as easily be considered by the County Court alone, and that is the course that has been adopted.
5. On 28th February 2019 the claimant landlord’s solicitors wrote a letter before action, in

which they added to the debt further sums for accumulated interest, a Land Registry fee for obtaining an official copy of the leasehold title (to check details of any mortgagees) and their costs for issuing the letter. The new total demanded was £3 438.79.

6. The defendant was struggling to come up with the required payment and needed to raise funds from his bank. He kept his landlord aware of his efforts to raise the money and went so far as to promise payment by 29th March 2019. Unfortunately there was a delay in the bank releasing the funds, he missed his promised deadline, and on 2nd April 2019 his landlord issued a claim in the County Court Business Centre.
7. Unfortunately the claim form sought payment of “£4 879.10 being monies owed by the defendant for ground rent and/or service charge arrears pursuant to a lease”, plus interest and contractual costs. The amount claimed was expressed to be £5 082.25 plus a court fee of £410.00, and legal representative’s costs of £100.00.
8. Unaware that the claim had been issued, the defendant obtained the funds and on 4th April transferred the originally agreed sum of £3 438.79 from his bank to the claimant’s account. Particulars of Claim were served upon him the same day, this time correctly identifying the arrears as £2 973.50, plus interest, contractual costs, and “solicitors fixed costs, all disbursements and VAT (as appropriate), amounting to the sum of £2 415.60 to date and continuing to accrue...”
9. The arrears were therefore paid within days of issue of the claim, and on the same date as the Particulars of Claim. The only matters outstanding thereafter were a very modest amount of interest up until the date of actual payment, which the court awards in the sum of £22.81, and the landlord’s costs.
10. Although this is a small claim the landlord relies upon a provision in the defendant’s lease, viz paragraph 13 of the Third Schedule, entitling it to recover :
...on demand all costs charges and expenses (including legal costs and surveyors’ fees) which may be incurred by the lessor or which may become payable by the lessor ...under or in contemplation of any proceedings in respect of the flat under sections 146 or 147 of the Law of Property Act 1925 or in the preparation or service of any notice thereunder notwithstanding that forfeiture is avoided otherwise than by relief granted by the court.
11. A mistake commonly made by landlords is to claim that the legal costs of recovering arrears are covered by just such a provision, but without them being able to prove that at the time they had the genuine intention of bringing forfeiture proceedings to ensure recovery. In this case, however, the letter before action dated 28th February 2019 [at page 121] does make that point clear. The legal costs of pursuing the debt are therefore at first glance recoverable.
12. However, as hinted at by the defendant’s complaint about the unreasonableness of the costs, and as more expressly mentioned in the tribunal’s directions, the defendant does enjoy the more recent protection of paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This provides additional protection where a landlord is entitled under the terms of a residential long lease to recover its legal costs by means

of an “administration charge”.

13. In force since 6th April 2017, the paragraph provides that 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, and the relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
14. The court therefore approaches the landlord’s claim for contractual costs on very much the same basis as it would summarily assess costs, considering not only whether the costs claimed were reasonably incurred but also whether they are proportionate.
15. The claimant has produced two schedules of costs, the first as directed by the tribunal and covering the period up to 5th September 2019, and the second for the subsequent period until trial. The first totals £3 476.00; the second £4 374.80 : a combined total of £7 850.80 to chase a debt of £2 973.50 plus a modest amount of interest paid within days of issue.
16. Mr Sinclair (no relation), appearing for the claimant, accepted that the first costs schedule includes a sum of £250 for the letter before action which the defendant had already included in his payment on 4th April. The same applied to a Land Registry search fee. He also accepted that he was in no position to prove that £230 had been incurred in writing to the defendant’s mortgagee. This reduced that schedule by almost £500.
17. However, there are more fundamental problems. By wrongly including contractual costs as part of the debt claimed the value was increased and so the court issue fee increased by two scale points from £105 to £410. The defendant should not suffer for that mistake.
18. From the moment the defendant paid off his arrears (save for a trivial sum for continuing interest) this claim became an argument solely about costs. The time and effort spent in creating lengthy statements of case and/or witness statements concerning the merits of the claim for service charges were unnecessary. If the tribunal’s directions, made without a hearing, were inappropriate in requiring unnecessary steps to be taken then the claimant’s solicitors should have written back challenging them.
19. The hourly rates claimed are also excessive, even were the court to accept Mr Sinclair’s argument that the court-approved rates were set in 2010 and should be uplifted by the CPI to account for subsequent inflation. Many would like to see their income protected against inflation, but not often do they succeed. The court declines to accede to these submissions, with the result that the Grade C rate claimed is 27.3% above the approved rate, and that for Grade D is 52.5% higher.
20. The instruction of counsel, at a fee of £1 200 plus VAT for a very small claim about costs only, is excessive. A costs lawyer could have attended to justify the rates and times claimed at much lower cost. Deployment of Grade C and, initially, Grade D staff on this matter was appropriate, with just light supervision.
21. Doing the best I can, an initial analysis and assessment of the costs schedules results in

the court making the following reductions :

	<i>Claimed</i>	<i>Allowed</i>
1st costs schedule		
Attendances	£637.50	£459.00
Work done on documents	£1,910.00	£496.00
VAT on the above	£509.50	£191.00
Court & Land Registry fees	£419.00	£111.00
Total :	£3,476.00	£1,257.00
2nd costs schedule		
Attendances	£795.50	£450.00
Work done on documents	£1,483.50	£595.00
Counsel	£1,200.00	£500.00
VAT on the above	£695.80	£309.00
Court fees	£200.00	£200.00
Total :	£4,374.80	£2,054.00
Grand total :		£3,311.00

22. On 31st July, by email, the claimant's solicitors made the defendant an offer expressed to be without prejudice save as to costs. The offer was to reduce the costs claimed to that date by 40%, requiring the defendant to pay the sum of £1 963.64 (inclusive of VAT and disbursements) by no later than 15th August 2019.
23. As can be seen from the table above, the court's initial assessment of allowable costs up to 5th September is only £1 257.00. It was therefore reasonable for the defendant to reject that offer, but not for him to make no offer at all. Court or tribunal proceedings of some sort were therefore necessary, albeit on a much simpler and less costly basis than that adopted by the claimant.
24. Applying paragraph 8 of the Costs Practice Direction (at para 44.SC2 in the 2019 edition of the White Book), the court must not be seen to be endorsing disproportionate and unreasonable costs, so having done an initial assessment the court must then consider whether the costs are proportionate.
25. In this court's view the costs are still disproportionate to what is a modest claim for costs incurred in issuing proceedings because the defendant had missed his promised payment

date. The defendant has not helped himself by making any counter-offer and thus work has continued to recover what is due. A proportionate amount, in the circumstances, is £2 500 (inclusive of VAT, if the claimant's solicitors can confirm that their client is not VAT registered and cannot set that element off). If the claimant is VAT registered then an appropriate deduction must be made.

Dated 21st November 2019

Graham Sinclair
First-tier Tribunal Judge
sitting as a judge of the County Court pursuant to section 5(1)(c) and (2)(u) of the County Courts Act 1984