



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) & IN
THE COUNTY COURT AT
ROMFORD, sitting at 10 Alfred
Place, London WC1E 7LR**

Tribunal reference : LON/00BG/LSC/2019/0095

Court claim number : E05YY21

Property : 13 Ricardo Street, London E14 6EQ

Applicant : Poplar HARCA

Representative : Mr. J Fieldsend, counsel instructed
by Capsticks solicitors

Respondents : Mr. Muhammed Meraj

Representative : In person

Types of Application : Service charges

Tribunal Members : Judge Tagliavini
Mr. K Ridgeway MRICS
Mr. L Packer

In the county court : Judge Tagliavini (sitting as a
District Judge of the County Court)

**Date and venue of
Hearing** : 11 July
10 Alfred Place, London WC1E 7LR

Date of Decision : 18 July 2019

DECISION

Summary decisions of the tribunal

- I. The tribunal determines that the application has been compromised by the respondent agreeing to pay to the applicant, the sum of £23,862.20 by 31 March 2020. Therefore, the tribunal no longer has jurisdiction to determine this application.

Summary decisions of the County Court

- II. Costs are summarily assessed in the sum of £5,238.00 to be paid by the respondent (defendant) no later than 31 March 2020.
-

The application

1. A referral dated 27 February 2019 from the County Court sitting at Romford, requires the tribunal to determine the respondent's liability to pay service charges totalling £21,209.05 under the provisions of section 27A of the Landlord and Tenant Act 1985, comprising of £18,954.12 in respect of major works and £2,234.93 annual service charges.

The Preliminary Issue

2. The applicant, however raised the preliminary issue as to whether the tribunal retained a jurisdiction to determine this matter the parties having reached an agreement compromising these matters on 10 April 2018. Mr. Fieldsend submitted that on 10 April 2019 the parties, in an exchange of emails reached a compromise agreement, whereby the respondent agreed to pay the applicant the sum of £23,862.20 in settlement of the parties' dispute. Consequently, the tribunal no longer has jurisdiction to determine the application.
3. In support of this submission, Mr. Fieldsend referred the tribunal to a "without prejudice save as to costs" exchange of emails between the parties. These commenced on 18 February 2019 with the respondent offering to settle the dispute if 10% was deducted from the amount claimed of £21,209.05 on the basis that he would not pay the £8,433.98 claimed in interest or legal costs of £1,020.00 or the court fee of £1,533.15. In an email dated 19 February 2019 from Capsticks solicitors, this offer was rejected and a counter offer was made. This required the respondent to pay the sum of £21,209.05 plus legal costs of £1,020.00 and court fees of £1,533.15 totalling £23,862.20. A payment plan of 1 year was offered for the payment of the full sum agreed. This email ended with the words "I should be grateful to receive your response to this email no later than 22 February 2019.

4. On 10 April 2019 Mr. Meraj responded stating “After careful consideration I have decided to take your offer below. Please email or call me on (number provided) to discuss how we proceed with this.”
5. In support of his submissions, Mr. Fieldsend referred the tribunal to Chapter 3 of Foskett on Compromise, 8th Edition in which, it was stated that a court need look at all of the negotiations until the point of agreement is reached and the fact that negotiations are continued thereafter will not of itself affect the existence of the agreement concluded. If the continued negotiations disclose an agreed rescission of this agreement then the position is different. Once a “without prejudice “ offer is accepted, a complete contract is established which is binding on both parties.
6. Mr. Fieldsend submitted that a binding agreement had been reached on 10 April 2019 between the parties and there was no further correspondence, which showed that the parties had agreed to resile from this. On the contrary, the email correspondence of 11 June 2019 between the parties showed that the applicant believed that an agreement had previously been reached.
7. The respondent contended that no agreement had been reached on 10 April 2019, as after having sent his email accepting the Respondent’s offer he had a telephone conversation with the sender on 11 April 2019, who informed him that the offer could not be accepted as further costs had been incurred. Therefore, Mr. Meraj asserted there had been no compromise agreement reached by the parties and the tribunal could continue to determine the disputed application. However, Mr. Meraj could not produce any written or other evidence of this conversation on 11 April 2019 in any subsequent exchange of correspondence.

The tribunal’s decisions and reasons

8. The tribunal finds that on 10 April 2019 the parties reached a compromise agreement. Further, the tribunal finds that the (counter) offer made by the applicant on 19 February 2019 was capable of acceptance on 10 April 2019. The tribunal finds that the offer was not withdrawn despite the applicant having stated “I should be grateful to receive your response to this email no later than 22 February 2019.” Further, the tribunal finds that the respondent’s actions on 10 April 2019 indicated that he believed the (counter) offer was capable of acceptance by that date and purported to accept it.
9. Therefore, the tribunal determines that the application has been compromised by the respondent agreeing to pay to the applicant the sum of ££23,862.20 by 10 April 2020 and that the proceedings are stayed, subject to any application by the applicant to enforce the terms of the agreement in the event of non-compliance by the respondent.

10. In conclusion, the tribunal finds that it does not have jurisdiction to determine the respondent's liability to pay the service charges the subject matter of this application.

The issues and decisions of the County Court

Costs

11. The applicant (claimant) sought the summary assessment of the costs incurred since the compromise agreement was reached, in the sum of £5,283.000 reflecting the costs incurred in preparation for the hearing.
12. In support of the application, Mr. Fieldsend submitted that these costs would not have been incurred had Mr Meraj not sought to resile from the compromise agreement. The costs now sought covered the costs of counsel's preparation and attendance at the hearing, the preparation of the Applicant's witness statement and hearing bundles and costs schedule. Mr. Fieldsend also told the court that the applicant would be satisfied with an order or costs which allowed Mr. Meraj until 31 March 2020 to pay them in full.
13. Mr. Meraj opposed the making of an order for costs submitting that it was "very unfair" as the Applicant had delayed for two months in responding to his email of 10 April 2018 accepting its (counter) offer. Mr. Meraj disputed the amount of counsel's fee of £3,500, stating that a person from the solicitor's office at Capsticks LLP could have represented the Applicant.
14. It was determined that the Applicant (Claimant) having been successful in its argument on the Preliminary Issue it was appropriate to make an order for costs under s.51 Senior Courts Act 1981 in accordance with CPR 44.2 of the Civil Procedure Rules.
15. Therefore, the costs are assessed in accordance with CPR 44.3; 44.4 and 44.5. The court finds that the costs claimed by the Applicant (Claimant) have been reasonably incurred and are reasonable in amount. Accordingly, the Court finds that the sum of £5,283.00 is payable by the Respondent (Defendant) to the Applicant (Claimant) no later than 31 March 2020.

Signed: Judge Tagliavini (sitting as a District Judge of the County Court).

Dated: 18 July 2019

Rights of appeal

Appeals in respect of decisions made by the FTT

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with this 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 reasons 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).

Appeals in respect of decisions made by the tribunal judge sitting in her capacity as a Judge of the County Court

An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: You must in any event lodge your appeal notice within 21 days of the date of the decision against which you seek to appeal.

Further information can be found at the County Court Offices (not the tribunal office) or on-line.

Where you wish to appeal both the decision of the FTT and the decision of the tribunal judge sitting as a judge of the County Court you must follow **both** routes of appeal.