



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

**IN THE COUNTY COURT at Central  
London, sitting at 10 Alfred Place,  
London WC1E 7LR**

**Tribunal reference** : **LON/00AG.LSC/2020/0316**

**Court claim number** : **G3AY52E3**

**Property** : **Flat 1, 31 Broadhurst Gardens,  
London NW6 3 QT**

**Applicant/Claimant** : **31 Broadhurst Gardens Limited**

**Representative** : **Charles Sinclair - Counsel**

**Respondent/  
Defendant** : **Mr Meen Akbar**

**Representative** : **Dr Zhen Ye - Counsel**

**Tribunal members** : **Judge Dutton and Mr K Ridgeway  
MRICS**

**In the county court** : **Judge Dutton**

**Date of hearing** : **17 May 2021 by CVPRemote**

**Date of decision** : **8 June 2021**

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**DECISION**

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**Covid-19 pandemic:**

This has been a remote video hearing which has been [consented to by the parties. The form of remote hearing was CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined in a remote hearing. The documents that

we were referred to are in a bundle of 448 pages, the contents of which we have noted.

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

### **Summary of the decisions made by the Tribunal**

1. The following sums are payable by the Mr Meen Akbar to 31 Broadhurst Gardens Limited by 13 July 2021
  - (i) Service charges and administration charges: £6,314.83
  - (ii) The Counterclaim by Mr Akbar is dismissed

### **Summary of the decisions made by the Court**

- (iii) Under the terms of the order dated 25 September 2020 we are required to determine the issues set out in the claim and counterclaim only and transfer back to the Court the remaining matters, namely, contractual and fixed costs and interest. Accordingly, it would seem that there are no County Court issues for us to decide and the matter is transferred back to the Court for the determination of the outstanding issues.

### **The proceedings**

2. Proceedings were originally issued against the respondent on 7 April 2020 in the County Court Business Centre under claim number G3AY52E3. The respondent filed a Defence and Counterclaim on or about 27 May 2020, in response to which the applicant filed and served a Reply to Defence and Defence to Counterclaim dated 15 June 2020. The proceedings were then transferred to the County Court at Central London and then to this tribunal by the order of Deputy District Judge Colquhoun dated 25 September 2020.
3. No directions were issued by the Tribunal, instead the matter was listed for a hearing to determine the claim and counterclaim on 17 May 2021

### **The hearing**

4. The applicant 31 Broadhurst Gardens Limited was represented by Charles Sinclair of counsel, instructed by Brady Solicitors Limited. The respondent leaseholder, Mr Meen Akbar, was represented by Dr Zhen Ye of counsel.

### **The background**

5. The subject property at flat 1, 31 Broadhurst Gardens is a lower ground floor flat (the Flat) in a building at 31 Broadhurst Gardens (the

Building) comprising 5 flats. A full description of the Building and the Flat are to be found in the lease of the Flat dated 8 May 1997 between Senka Petrovic and Petar Petriovic (1) and the Respondent, named as Amin Akbar (2). The lease is for a term of 999 years from 1 January 1995 at a nominal rent and subject to the obligations on the part of the landlord, now the Applicant, and the Respondent. The specific provisions of the lease will be referred to below, where appropriate.

6. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

### **The issues**

7. The sums claimed by the Applicant were as follows:
  - (i) A service charge and administration charges in the sum of £6517.39 for the period 9 May 2018 to 30 June 2020;
  - (ii) A late payment administration fee incurred on 31 January 2020 in the sum of £95 and the preparation and processing of arrears referral in the sum of £186 are included in the amount of £6,571.39 above;
  - (iii) The Respondent admitted that the Applicant was entitled to charge the administration charges but said they had to be reasonable. In addition, at paragraph 14 of the Defence and Counterclaim he admitted that the balancing charge for 2018 in the sum of £49.17 was not in issue.
  - (iv) Interest and legal costs remain in dispute and are to be transferred back to the Court.
8. At the start of the hearing the parties identified the relevant issues for decision as follows :
  - (i) The payability and or reasonableness of the various service charges for 2019 and 2020;
  - (ii) Whether the Respondent had a counterclaim in respect of the cost he alleged he had incurred in respect of works he says he and his family have carried out at the Building over a number of years

### **County court issues**

9. After the proceedings were sent to the tribunal offices, the tribunal indicated that it would be willing to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). However, this was objected to. For the Applicant Mr Sinclair indicated that he did not think we should deal with the counterclaim and that he

had prepared for the hearing to deal with the reasonableness and payability of the service charges for the two years, 2019 and 2020.

10. For the Respondent Dr Ye argued that the counterclaim was within our jurisdiction. It was noted however, that whilst the counterclaim limited the sum claimed to a maximum of £5,000 the statement from Mr Akbar sought to recover £18,950.
11. We have considered the Transfer order from the Court and conclude that it was the claim and the counterclaim that was transferred to us and propose there to deal with both.
12. In the bundle supplied for this hearing we had copies of the Court papers, witness statements from Mr Jerome James, the Building manager employed by Warwick Estates Property Management Limited (Warwick), from Emma Voce a solicitor with Bradys and Mr Eric Shirbini, who at the time of the statement was a director of the Respondent. We also had statement by Mr Akbar and account papers for the years 2018 and 2019. In addition there was some late disclosure from Mr Akbar. We have noted the contents of these documents and will refer to them as necessary during the course of this decision.

### **Decisions and reasons**

13. Documents in the hearing bundle are referred to by their section number and page number, so that [5/1] refers to section 5, page 1.

### **Service charge year 2019**

14. In the defence and counterclaim the Respondent says that he disputes the following;
  - Whilst accepting that the Applicant can seek reserve fund payments, he disputes the sum claimed in the two years
  - The annual budgets, setting out estimated charges are challenged says the Respondent because there is no proof that costs have been genuinely incurred.
  - The Applicant is put to proof as to expenditure and compliance with clause 5(4) of the lease.
  - The Respondent challenges the management charges of Warwick Estates and asserts that he has not been provided with the Summary of his Rights and Obligations in respect of the administration charges of £281.

15. In his witness statement at section 7 page 340 onwards Mr Akbar goes into more detail of his dispute and his counterclaim. His statement tells us that Warwick was appointed in 2018 and is critical of their performance. He complains that the sums sought as contributions to the reserve fund are too high. Reference is made to a letter his solicitors, Smith & Stone, wrote to Brady's on 16 March 2020 which is at section 7 page 356. This raises a number of issues and responds to the letter from Brady solicitors dated 4 March 2020. It also sets out the Respondent's concerns in respect of Cleaning, Garden and grounds maintenance, repairs and gutter works. The question of water ingress is raised and disrepair to his Flat.
16. His witness statement at paragraph 16 raises issues with regard to the management fee as well as the issues raised in the letter of 16 March 2020. At paragraph 18 he speaks of the disrepair of the Building and the Flat. He says that he had to regularly employ contractors to clear the guttering and in the period 2002 to 2007 paid £3,780 and from 2008 this has continued, with him now estimating that he has spent in excess of £11,000 on this item. He refers to an agreement he reached with a previous director of the Respondent, Mr Nicholson, who appears to have agreed a refund/allowance of £3,780 but the Respondent says this was never credited to him.
17. His statement goes on to refer to cleaning that he and his family has undertaken from 2006 and in October 2009 again Mr Nicholson offered an allowance of £400 per annum for the cleaning Mr Akbar and his family were said to have undertaken. The sum of £800 representing a refund for 2006 and 2007 was not made. He goes on to say that this cleaning continued in the period 2008 to 2020 and utilising the agreement he says he reached with Mr Nicholson he should be credited with £5,200.
18. Reference is made to the cost of vermin treatment in the sum of £180, which he says he paid.
19. The statement then moves on to address tree works which he said he undertook; it would seem to a tree in the garden area demised to him under the lease. The cost was £800 and he claimed he should be refunded this amount.
20. At paragraph 22 of the witness statement he sets out the items he says from the basis of his counterclaim, which totals £18,950. This is made up of the works to the tree of £800, the vermin treatment of £180, the 'agreed' amount of £3,780 for guttering and the further sum of £8,190 for guttering works in the period 2008 – 2020 at the rate of £630 per year and cleaning of £6,000 to include the £800 he says Mr Nicholson agreed.
21. There are letters, emails and photographs exhibited to the statement.

22. A response to these issues is addressed by Mr James in his statement at section 4 of the bundle, page 115 onwards. The statement confirms the basis of the claim as set out in a schedule of service charge costs, including reserve fund contributions and the balancing charge of £49.17 for 2018, which is no longer in issue. The budgeted costs for the four items of concern in the letter from Smith & Stone are addressed and year end accounts were produced showing the sums actually spent on these and other items.
23. In respect of the allegation that the Applicant has failed to comply with the repairing obligation at clause 5(4) it is said that notwithstanding the Respondent's failure to pay this service charges the Applicant has sought to comply with those obligations.
24. On the question of the works the Respondent says he and his family have carried out and for which he is due a refund/credit we are told that the Applicant has on two occasions issued proceedings against the Respondent and indeed in the late documents there is a transcript of proceedings in the County Court between these parties. This is dated 14 November 2016 and we shall refer to the contents in the Findings section of this decision.
25. The statement goes on to deal with the works that the Respondent is said to have undertaken to the tree. Mr James says that any works at that development would be approved by him and that he had not given authority to the Respondent to carry out works or removal of trees in the common areas.
26. His statement went on to address the disrepair allegations raised and refers to surveys carried out by Day Associates, Construction and Property professionals as well as a building defect report dated August 2020 which refers to ground works having an estimated cost of £40,663.80 and external redecorations and repairs for the sum of £45,188.70. We have noted these reports, which we understand the Respondent has seen.
27. In addition to these reports there is a further one from Hurst Peirce + Malcolm LLP, which constituted a "targeted" inspection and commentary on the movement of the paving, plant and boundary walls in the front garden. Again the contents of that report had been noted by us. His witness statement summarises his view that the Respondent's defence and counter claim have no merit.
28. In addition to these two witness statements the bundle included statements from Miss Voce, which dealt with legal matters. She was not called to give evidence. There was also the witness statement from Mr Shirbini but we were told that he is no longer a director of the Applicant Company and in fact has sold his flat and would not be attending to give evidence.

29. We heard from Mr James and Mr Akbar who gave live evidence to us. Mr James in cross examination by Dr Ye was asked whether he agreed that the management fee was limited to 10% by reference to section 4 paragraph 4.3 which is where one could find the terms of the lease. At clause 1(1)(b) of the fifth schedule, it says about the managing agent *“The cost of employing a managing agent on a commission or charge not exceeding 10% of the total expenditure to cover the administration expenses of the lessor should he not employ a managing agent.”*
30. Mr James’ response was that whilst he was familiar with the wording, he was not involved in the setting up of the management charges but knew of no other clause in the will that dealt with the management fee. He was then taken to the service charge accounts for December 2019 which were to be found in the exhibits to his witness statement at page 138, which showed an income and expenditure account for the Property which was different to an extent to the service charge income and expenditure account for the same period. This was to be found at page 141. At page 141 expenses in relation to the lift and directors and insurance were omitted indicating that they were not therefore recoverable as a service charge. This was one element that Mr Akbar appeared to challenge in the letter his solicitors wrote, and generally.
31. It was put to Mr James that it was the Respondent’s case that the management fee should be based on the service charge account and that it should be 10% of same. The actual service charge account excluding the contribution to the reserve fund was £15,260 but in the service charge account at page 141 it was £10,920 plus the contribution to the reserve fund giving a figure of £15,920 which applying the 10% was less than the service charge management fee which is recorded at £2,227. The same applied for the following year. No copy of any management agreement was produced. In addition there appeared to be no invoice for this charge.
32. On the question of the Company Secretary he confirmed that Warwick acted as Company Secretary for the Applicant and that this was something the lease allowed them to do. The secretarial fee in 2020 was £402, an increase from £390 for the previous year. He could give no real explanation other than to say that these services increased at around 3% each year and were agreed with the directors of the Applicant.
33. He confirmed he had seen the letter from Smith & Stone and that it was responded to.
34. He was then asked questions on gardening. It was put to him that for the 2018 year the quarterly maintenance was £125 plus VAT and that accordingly the estimated charge of £600 was correct and he was asked why therefore the budget for 2019 was at £800. In response he said that if you looked at the actual costs in 2018 these were £954 and there

were also some additional costs in 2018 by reference a small invoice in the bundle at page 391 of £30.

35. In 2019 it was put to him that the budget for the gardening had increased to £2,000 and he was asked to explain the difference between that and the previous sums actually incurred. He said that they were asked to obtain quotes for tree removal and pruning and also that the budget was increased to cover work that would be undertaken not necessarily by Protech but by other contractors. He confirmed that there were no quotes to support a figure of £2,000. Asked why they had not included invoices for 2020 and accounts he said that he had not been requested to do so notwithstanding the fact that the claim appeared to cover the period to 30<sup>th</sup> June 2020.
36. He was asked where the lease provides for audited accounts why this had not been done. His response was that the accounts in his view were a form of auditing as they were carried out by external auditors and at page 143 of the bundle is the independent accountant's report for the year to 31<sup>st</sup> December 2019 which explicitly states that an audit in accordance with international standards on auditing had not been undertaken.
37. The cross-examination moved on to the question of reserve funds and he was referred to his witness statement. He accepted that there were parts of the Property which were in disrepair. His recollection is that Warwick took over management in May of 2018 but wished to instruct surveyors to deal with these matters, which they did, and the inspection took place in June of 2019. The report of Hurst Peirce + Malcolm LLP was obtained in August 2020 as was the structural defects report from Day Associates. This followed on from an earlier building defect report issued in August of 2019. It was his view, therefore, that the Applicants were proceeding with the necessary experts to deal with the issues.
38. Asked about the works that were required in Flat 1, Mr James was of the view that these could have been caused by external issues and that the view was that the external problem should be dealt with first before works were carried out to correct any problems that there may be in the Respondent's flat. In this regard we were referred to the Day Associates report of August 2019 which at paragraph 5.3 suggests that penetrative damp was from the surrounding ground to the external walls and programmes of works to attend to the walls were suggested. Asked why it had taken time to deal with this, the response was that these reports had been obtained as quickly as could be but of course with Covid-19 there had been certain restrictions. Asked why they could not have been instructed before lockdown Mr James thought this could well be because of the lack of funds. He did confirm, however, they were hoping to carry out the works this year and that they should do so provided funds were in place. The contributions to the reserve fund were in his view totally justified when one considered the



estimated costs that Day & Associates had put forward to undertake the works.

39. In re-examination he confirmed that Mr Akbar was not obliged to contribute towards the cost of the lift and that was not included in the service charge for which he was required to contribute, but that he was satisfied that other items in the service charge account were recoverable under the terms of the lease.
40. We then heard from Mr Akbar. Unfortunately his evidence did not get off to a good start. First it appears that he took some time to answer a telephone call and then it transpired that he did not have the original bundle or his witness statement as those had been left in his office. Asked when he had last read his witness statement it appeared to be some time ago.
41. He was taken to his counter claim at paragraph 22 of his witness statement. Insofar as the tree works were concerned, it was put to him that this belonged to him as it was in his garden. His response was that although the tree was in the garden, he thought he had to get permission to carry out the work. There was no invoice and he told us that his mother had paid for the works in cash.
42. Concerning the costs for vermin treatment, again there was no invoice produced but he said that there was a rat's nest at the front of the Property and was worried about it. He called the Council to ask them to come round and that he thought that a bush needed to be removed in the communal garden to help resolve the matter. Again no invoice was produced for this but he said he did not ask the Council for a copy and had not been able to get a copy for the Hearing.
43. Moving on to the guttering, it was put to him that the original claim of £800 said to have been approved by Mr Nicholson was no longer relevant as Mr Nicholson had ceased to be a director of the company some years ago. Mr Akbar said that he employed contractors to carry out guttering works and referred us to an invoice at page 439 of the bundle from F Cattini Builders & Plumbers dated 20<sup>th</sup> November 2007 in handwritten form said to be for work carried out for annual cleaning of drains and gutters in basement flat. This was the sum of £630 which formed the basis of the amount he said he was entitled to recover on an annual basis.
44. He told us that at the time this was incurred he was the only person living at the Property, so he decided that he had to 'get on with it'. He accepted there was no written agreement with the Applicants for this and indeed no written agreement for the cleaning at the Property. He was then referred to the County Court Judgement in November of 2016 and agreed that this appeared to relate to the years of 2010, 11 and 12 and this is confirmed at paragraph 15(1) of the transcript.

45. On the question of evidence of disrepair or damages to his flat he said he relied on photographs of the bedroom showing the damp but conceded there was no other evidence to support these issues. He confirmed also that the counter claim in fact was limited to the items set out at paragraph 22 of his witness statement and nothing else. This concluded the evidence on behalf of the Respondent.
46. It was noted that no alternative estimates/quotes were given for any of the works challenged. Further his challenge that he had not been afforded the right to inspect the accounts was, to an extent overtaken by the production of invoices with Mr James Statement. No real attempt had been made by Mr Akbar to consider these and of course, 2020 is based on estimates.
47. Miss Ye asked us to consider the skeleton argument that she had produced, which of course we have done. She also referred to the apparent confusion in the annual budget figures, for example in the year to December 2019, where there is a site total and a service charge total, the difference between the two being just under £1,000. There was also concern raised in that the percentage in the lease was 23.15% being the amount the Respondent had to contribute but it appears he was only being charged 22.21%. In her skeleton argument she referred to the question of auditing the accounts. This does not appear in the defence or Mr Akbar's statement, nor were questions raised at the hearing. We assume therefore it is not pursued, which seems reasonable as the accounts have clearly been undertaken by an outside agency.
48. On the question of management fees, it was her view that these were limited to 10% of the total service charge cost and that there had been an overcharge for the two years in question. The company secretary fees were not recoverable as there was no clause in the lease allowing them to do so and should in any event fall within the scope of the management fee. The same applied she said to directors insurance.
49. On the question of the budgeting for the garden, there was she said no evidence to support the uplift from £800 to £2,000 in the budget for 2020 and that a reasonable sum should be no more than £600. No explanation was given to the costs associated with the reserve fund and she reiterated that the accounts should be audited and were not. It was confirmed that no balancing charge had been made for the year ending 2019 and that this was the only year for which final accounts were available to us. On the question of the counter claim, she conceded that there was no evidence to support the sums claimed.
50. Mr Sinclair on behalf of the Respondents said the issue between the parties was contained in the pleadings and in the statement. It was not appropriate for issues raised in the Respondent's skeleton to be put forward in this case. Reference was made to the lease at page 65 of the

bundle and it was said that the costs of the secretary and insurance were covered by the fifth schedule, paragraph 1(1) under the expression total expenditure.

51. As to the managing agents, his submission was that the reading of clause 1(1)(b) was clear, that the costs of employing a managing agent on commission was one element of charge or in the alternative if no managing agent was appointed, then it was the lessor who could make a charge not exceeding 10% of the total expenditure. The question as to the correct percentage was raised. It is clear from the lease it should be 23.15% but it appears that something 1% below that was being charged although there was no explanation given to us as to why that should be the case.
52. On the question of gardening, his submission was that £800 was a reasonable sum to set as the budget. It was known that in the following year there would be an increase because of works that were required and one could also look at the previous year's actual costs.
53. Insofar as the reserve fund was concerned this needed to be built up as clearly there were going to section 20 consultations to be undertaken.
54. On the counter claim this now appeared to relate to those items set out at paragraph 22 of the Respondent's witness statement. No claim appeared to be pursued for disrepair and we were reminded that the balancing charge and the administration charges had been admitted.
55. Turning to paragraph 22, it was put to us that Mr Akbar had produced no invoices and no agreements to evidence any of the sums that he sought to claim. We were reminded that Mr Nicholson had left in 2013 so that any agreement that may have been reached was not on going. He was not a director of the company after that time. There was also of course the question as to limitation in respect of these sums.

### **Service charge year 2020**

55. In this year, which is estimated, there were charges of £553.75 for the reserve fund from 1 January to 30 June 2020 and an on-account payment towards service charges of £1,679.53. His witness statement lumped the two years together.

### **FINDINGS**

56. We will deal firstly with the service charge items. The claim in the County Court was in respect of estimated costs as the final accounts were not available until March of 2020. However, as this case has

come to us as a form of deployment it seems appropriate to look at the 2020 actual accounts and to compare those with the estimated accounts. In the main there appears to have been a good and close estimation to the actual charges. In truth Mr Akbar does not really challenge much of what is contained in the 2019 accounts. If one looks at the income and expenditure account for 2019 the total expenditure is £15,260 against a budgeted figure of £13,741. It is difficult to see, therefore, that the budget was incorrect. Even if one then looks at the service charge account for the same period where certain items of expenditure are removed, the budget figure is £12,851 and the actual expenditure is £10,920. The big item of expenditure that covers most of the difference is lift maintenance of £4,191 for which a budget figure of £800 had been allowed but of course, Mr Akbar has no obligation to contribute to the lift costs.

57. We are satisfied, therefore, on the papers before us and the evidence that we have heard both written and oral, that the budget figure for 2019 is close enough to the actual costs of 2019 with respect of the service charge account for Mr Akbar are not in truth under much challenge. The general minor repairs for which £1,000 was allowed has worked out at £2,575 although the gutter clearance at £1,500 came in lower at £900. However, those seem to us to be a minutia and we therefore reject Mr Akbar's arguments that those estimated costs in respect of cleaning, general repairs and gutter maintenance are irrecoverable. It should be noted, however, that the cleaning for which an allowance of £1,200 was made in 2019, appeared not to have incurred any costs at all in the year. There were several invoices included within the bundle which were not challenged by Mr Akbar during the hearing.
58. The statement of account annexed to the particulars of claim shows the figure of £6,517.39 as being claimed. Of this £186 is shown as the preparation and processing of arrears and £95 as a process fee for review and reconciliation of outstanding payments. Neither of those was challenged at the hearing. In respect of the other items, we have the service charge demands for the year 2018 which were not in truth challenged at the hearing and indeed the balancing charge for the year to December 2018 was admitted.
59. In respect of the estimated charges for 2020 we have considered the actual costs for 2019 and there would seem to be no item of expenditure which has been estimated that is out of line with the actual charges for the previous year. The matter can be reviewed once the actual charges are known.
60. On element for which a specific challenge was made related to the management fee. We prefer Mr Sinclair's interpretation of the lease in this regard. We read the paragraph at the Fifth Schedule 1(1)(b) to mean that there is the alternative of either the cost of employing

managing agents on a commission, or in the alternative, a charge of 10% if the lessor does not to employ managing agents and carried out the work itself. Accordingly, the fee claimed by Warwick is payable and no alternative was suggested.

61. We are not so convinced by the argument that the company secretary and insurance is recoverable as a service charge. It seems to us to be taking the definition of total expenditure too far, particularly when the definition at the fifth schedule paragraph 1(1) refers to carrying out obligations under clause 5(4) of the lease.
62. Clause 5(4) is on the terms that it is subject and conditional upon payment being made by the tenant of the interim charge and the service charge with proviso for the lessor to maintain and keep in good and substantial repair the main structure of the building, services, the lift and the roof. The clause also goes on to provide for external decoration, cleaning maintenance, payment of rates and other taxes and reserve fund monies. The insurance provisions at clause 6 refer to the building and we cannot see anywhere in the lease that deals with the costs associated with the running of the Respondent company.
63. The directors' insurance does not appear in the service charge income and expenditure account for 2019 but the company secretary fees of £390 do. We therefore disallow those for 2019 in the sum of £390. In the estimated account for 2020 at page 367 the sum of £402 is shown as the company secretary fee and £83 for directors and officers' insurance We therefore disallow both for this year. We apply the percentage recorded in the lease of 23.15%, although noting that Mr Akbar appears to have been charged at 1% lower for reasons that were never explained to us. The sum which should be removed from the amount claimed of £6,517.39 is £202.56, (being the total of £390 + £402 + £83 = £875 x 23.15%).
64. It must be said, however, that that does not enable Mr Akbar to avoid responsibility. He is a shareholder and therefore it is something of a pyrrhic victory to suggest that he does not have to pay these costs as a service as it seems to us, he would be liable to pay them as a shareholder.
65. We turn then to the counter claim which we must confess was something of a non-starter. This was not helped by the lack of evidence that was provided by Mr Akbar. To come to a hearing of this nature without the witness statement that he had made and no access to the bundle of documents is unforgiveable. It appeared that he had little interest in the proceedings and many of his answers were given in a somewhat off-hand and unhelpful manner. He has no documentary evidence to support any of the claims that he makes. Furthermore, when one considers the transcript of the matter in November of 2016, a document which we understand the Respondent produced it seems

clear to us that any agreement that there might have been before the years 2010 to 2012 had been determined by the Leasehold Valuation Tribunal and any off-setting had been dealt with at that time. At paragraph 16 of the transcript of the Judgement the Learned Deputy District Judge says as follows: *“It therefore appears to me that there are no credits before me that have not been taken account in the LVT determination which I find is binding upon me.”*

66. We do not have the benefit of the papers that were before the LVT in this case nor a copy of the decision. It would appear, however, that Mr Akbar was represented by Counsel throughout. In the chronology listed at paragraph 3 of the transcript the question of the sum of £3,780 plus later years is referred to, the resignation of Mr Nicholson on 8<sup>th</sup> February 2013 is recorded and the LVT’s decision made on 7<sup>th</sup> May 2013 refers to the issues it was required to determine for the three years. In those circumstances it seems to us that doing the best we can any suggestion of any refunds for the years 2010 to 2012 have been addressed.
67. With Mr Nicholson no longer being a director of the Applicant Company, it cannot realistically be argued by Mr Akbar that there is some continuing contract, at least in the absence of any evidence whatsoever to support that being the case. In the circumstances, therefore, accepting that Mr Akbar wishes to extend his counter claim to the items shown on paragraph 22 of his witness statement, far beyond the limit of £5,000 set out in his defence and counter claim, we find that he is unable to persuade us at all that there is merit to the sums that he seeks to recover.
68. We find therefore that Mr Akbar is liable to pay the sum of £6,314.83 within 35 days of the date of this decision.
69. Insofar as the issues with his flat are concerned, that we think would need to be dealt with by separate proceedings if that is something he wishes to do. However, it does appear that the Applicants are aware of the issues and are taking steps to address them. Hence in our view our further finding that the reserve fund contributions are wholly reasonable. We have already recounted above the amounts that have been estimated by Day & Associates for the works to the Property and it is quite clear, therefore, that a substantial reserve fund will be of benefit to all leaseholders.
70. We make no order under section 20C of the Landlord and Tenant Act 1985 giving the findings that we have made.

**Name:** Judge

**Date:** 8 June 2021

## **ANNEX - RIGHTS OF APPEAL**

### *Appealing against the tribunal's decisions*

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

### *Appealing against the County Court decision*

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

*Appealing against the decisions of the tribunal and the County Court*

In this case, both the above routes should be followed.