FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal reference :	**LON/00AS/LAC/2021/0014**
HMCTS code (paper, video, audio):	**V: CVPREMOTE**
Property :	**7-21 Norfolk Road, Uxbridge, Middlesex UB8 1BL**
Applicant:	**Rijac Properties Limited**
Representative :	**Mr M Shields (director)**
Respondent:	**7-21 Norfolk Road RTTM Company Limited**
Representative :	**Mr T Pettie**
Type of application:	**Liability to pay service charges**
Tribunal members :	**Judge S Brilliant and Mr S Mason FRICS**
Venue :	**10 Alfred Place, London WC1E 7LR**
Date of hearing :	**07 October 2021**
Date of decision :	**25 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was by video V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The parties provided statements of case and exhibits, albeit not in an electronic bundle.

Summary of the decision

1. The Applicant ("the tenant") is liable to pay to the Respondent ("the management company") by way of service charge a total of 37.5% of £11,227.20 in respect of legal costs, being £4,210.20. This breaks down to £1,403.40 in respect of each of the three flats the tenant owns.

Background

2. 7-21 Norfolk Road, Uxbridge, Middlesex UB8 1BL ("the block") consists of 8 flats. The tenant is the long lessee of 3 of those flats. The tenant is a company controlled by Mr Shields who appeared on its behalf.

3. The tenant is also the freeholder of the block, but that is irrelevant in these proceedings because the block is managed by the management company which is responsible for providing the relevant services and collecting the appropriate service charges. One of the directors of the management company is Mr Pettie, who appeared on its behalf. He is an FCA and has been given the responsibility of organising the service charge accounts and providing the usual certificate in respect of each service charge year which ends on 31 December.

4. There has been a history of litigation between the parties. In previous proceedings (LON/OOAS/LUS/2013/0004 and LON/OOAS/LAM/2013/0025), a consent order was made on 14 January 2014 whereby the parties agreed to implement the proposals set out in the schedule to the order. Paragraph 7 of the schedule provided:

It is agreed that the running costs of the [management company] will be included in the service charge demands

5. We were provided with one sample lease. The sums recoverable by way of service charge under the lease are to be found in clause 2(3)(a). It was felt that this service charge clause was not wide enough to enable the management company to recover what was needed to run the block and that is why paragraph 7 of the schedule was agreed upon.

6. It was not in issue that paragraph 7 did entitle the management company to recover its running costs by way of the service charge.

The 2019 proceedings

7. In 2019, the management company commenced proceedings under claim number F43YX388 against the tenant in the County Court at Uxbridge for arrears of service charges ("the 2019 proceedings"). The total amount claimed was £6,000 (£2,000 for each of the 3 flats owned by the tenant).

8. The 2019 proceedings were subsequently transferred to the Tribunal under reference LON/00AS/LSC/2020/0380.

9. A mediation took place on 17 March 2021 and an agreement was reached. By paragraph 4 the terms agreed included the following:

Mr Shields on behalf of *[the tenant] will make a payment to [the landlord] of £2,097.25 in full and final payment of the outstanding service charges payable for the period up and until 31 December 2018.*

[The tenant] will make a further payment to the deposit account of [the landlord] of £3,816. This payment to be for the sinking fund.

10. Mr Shields argued before us that a settlement was reached whereby the tenant only paid £2,097.25, approximately one third of the amount claimed. But this is disingenuous because it ignores the amount paid into the sinking fund. When this is taken into account the landlord recovered £5,913.25. Thus the landlord recovered almost 100% of the amount claimed less interest.

11. The parties agreed that the Tribunal proceedings would be withdrawn. It would be fair to say that the landlord up was the winner in the 2019 proceedings.

The costs of the County Court proceedings

12. The mediation agreement did not deal with the costs of the 2019 proceedings. The landlord has included the legal costs of the 2019 proceedings within the service charge account for the years ending 2019 and 2020. The total of the costs claimed is £11,227.20.

13. The amount included in the accounts for 2019 was £7,687.20. This was broken down into (a) solicitors costs of £6,627.20, (b) counsel's fees of £270, and (c) court fees of £790.

14. The amount included in the accounts for 2020 was £3,540. This was broken down into (a) solicitors costs of £2,340 and (b) counsel's fees of £1,200.

15. Mr Pettie was asked whether it was his submission that as a matter of principle these legal costs fell within the meaning of the words *running costs of the management company* in paragraph 7 of the schedule to the 2014 consent order.

16. He submitted that they did, and we consider that Mr Pettie is correct.

17. When faced with these demands for the legal costs, the tenant made an application to the Tribunal for a determination as to its liability to pay an administration charge.

18. This was a mistake. An administration charge is a payment a tenant is contractually bound to pay personally under a lease, independent of the service charge provision. For example, in the lease there is an obligation in clause 2(21) for the tenant to pay all expenses (including solicitors' costs and surveyors' fees) incurred by the management company incidental to the preparation and service of a s.146 notice.

19. If the landlord had made a decision to forfeit one or more of the tenant's leases it could have recovered its legal costs directly against the tenant under this clause as an administration charge.

20. But, as we have said, the landlord did not go down this route but took proceedings to recover a debt, as it was entitled to do so. These proceedings are about the landlord recovering its legal costs through the service charge. A challenge to the reasonableness of and liability to pay those legal costs is controlled by s.27A of the Landlord and Tenant Act 1985, whereas a challenge to an administration charge is controlled by paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

21. But it does not matter that the tenant started these proceedings on the wrong form. At the directions hearing Judge Latham rightly treated this as a service charges case and so far it is necessary we use our case management powers to treat the application made by the tenant as being in the correct form.

The bills of costs

22. The legal costs claimed must be reasonable and proportionate. As we have said the total amount claimed is £11,227.20.

23. We had been provided with:

(a) Narrative bills of costs from Price Evans for the period commencing 12 October 2018 until 18 September 2019.

(b) Bills of costs from Bonnetts for the period commencing 24 March 2020 until 06 January 2021.

24. The person having conduct of the proceedings was Ms Sherrie Munro, a paralegal. Her charge out rate was £250 per hour. The landlord had trust and confidence in her and that is why it changed solicitors when she moved firms.

25. We have examined the bills with some care. We are satisfied that for defended proceedings such as these the work undertaken was reasonable and proportionate. While Ms Munro's charge out rate was substantially in excess of what would be allowed on a party/party basis, we consider that on the facts of this case they were reasonable on a solicitor/client basis. Indeed, the tenant did not put forward any alternative rate.

26. It might be said that incurring £11,227.20 of costs in pursuing a claim of £6,000 plus interest is not reasonable or proportionate. But the Tribunal has considerable experience in assessing costs where such small amounts of service charges are being pursued, and these costs fall well within an acceptable bracket.

The tenants' case

27. The tenant has a poor record in paying service charges and there have been previous proceedings in the Tribunal resulting from its failure to pay service charges.

28. The tenant complains that the service charges being demanded are intended to be used to repay Mr Pettie who has made loans to the landlord. But the only reason that Mr Pettie has made such loans is that there was a shortfall in the funds of the landlord (which of course has no income apart from what it collects by way of the service charge). The shortfall was only caused because of the tenant's repeated failure

to meet its service charge obligations. Moreover the Tribunal has no jurisdiction to deal with how companies operate. There is accordingly nothing in this point.

29. There is no truth in the allegation made by Mr Shields that Mr Pettie has pursued these proceedings for his own reasons. There is no truth in the suggestion made by Mr Shields that the 2019 proceedings were abortive and vexatious.

30. Mr Shields complains that the actual expenditure for 2017 as audited by Mr Pettie himself is only £428 per flat, yet the landlord continues to press for a service charge of £2,000 per flat. He describes the 2017 service charge as an improper and invalid claim. But, as Judge Latham stated in the directions dated 24 June 2021, the Tribunal has in the light of the mediation agreement no jurisdiction to revisit any service charges prior to 01 January 2019. Moreover, as we understand it, the figure of £428 per flat was a first interim demand, in the same way that the first interim demand for 2020 was £550 and for 2021 was £585.

31. Mr Shields also complains about gross mismanagement of the block. There is no evidence of this.

Cost of these proceedings

32. If the landlord wishes to make an application for costs under r.13 Tribunal Procedure (First–tier Tribunal) (Property Chamber) Rules 2013 it should write to the Tribunal and the tenant within 14 days of receipt of this decision. There is no need for figures to be provided at this stage. The tenant must then send any submissions in reply to the Tribunal and the landlord within 14 days thereafter. Okay done

Name: Judge Brilliant: Date: 25 October 2021

Rights of appeal

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).