



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

Case Reference : **BIR/47UB/LSC/2021/0004 &
BIR/47UB/LLD/2021/0006**

HMCTS : **V: CLOUD VIDEO PLATFORM (CVP)**

Properties : **37 Sanders Road, Bromsgrove,
Worcestershire, B61 7DQ**

Applicant : **Mr E Taaffe**

Respondent : **Elmbirch Properties Limited**

Representative : **Remus Management Limited**

Type of Application : **Applications under sections 27A of the
Landlord and Tenant Act 1985 for a
determination of liability to pay and
reasonableness of service charges and
paragraph 5A of Schedule 11 to the
Commonhold and Leasehold Reform Act
2002 for the liability to pay
administration charges**

Tribunal Members : **Judge M K Gandham
Mr V Chadha MRICS MCI Arb FCIH MBA**

Date of Hearing : **18 November 2021**

Date of Decision : **05 January 2022**

DECISION

COVID-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing which had been consented to by the parties. The form of remote hearing was Video (V: CVP). A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing/on paper. The documents referred to were contained within the parties' bundles, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private. The Tribunal had directed that the proceedings were to be conducted wholly as video proceedings; it was not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who were not parties entitled to participate in the hearing; a media representative was not able to access the proceedings remotely while they were taking place; and such a direction was necessary to secure the proper administration of justice.

Introduction

1. On 2 August 2021, the Tribunal received an application from Elmbirch Properties Limited ('the Applicant') under section 27A of the Landlord and Tenant Act 1985 ('the Act'). The application was for a determination as to whether the service charges demanded for the service charge periods 25 June 2019 to 24 June 2020, 25 June 2020 to 24 June 2021 and 25 June 2021 to 24 June 2022, were payable and the amounts which were reasonably payable, in respect of the leasehold property known as 37 Sanders Road, Bromsgrove, Worcestershire, B61 7DQ ('the Property'). Directions were issued by the Tribunal in respect of the application on 10 August 2021.
2. On 23 August 2021, Mr Edward Taaffe ('the Respondent') made an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') in respect of litigation costs. A further Directions Order, in respect of the paragraph 5a application, was issued on 24 August 2021.
3. The Applicant is the freehold owner of the development known as Swallowfields ('the Development'), which is registered at the Land Registry under Title Number HW44734. The Property is located within the Development.
4. The Respondent is the current lessee of the Property (and associated parking space) under a lease dated 4 December 1985 made between (1) Barratt West Midlands Limited and (2) Caroline Sanders and Alan Noorkoiv ('the Lease'). The Respondent's leasehold title is registered at the Land Registry under Title Number HW57419.

5. The matter was listed for an inspection to take place on 17 November 2021, to be followed by an oral hearing, via CVP, on 18 November 2021.

The Inspection

6. The Tribunal inspected the Development on 17 November 2021. The Respondent was in attendance, as was Mr Mills (a Divisional Manager) and Miss Insley (the Property Manager) from Remus Management Limited ('Remus', the Applicant's Representative), who attended on behalf of the Applicant.
7. The Development is situated to the left of Sanders Road in Bromsgrove. It comprises 36 residential flats, parking spaces, gardens and grounds (which include an area for drying clothes). The residential flats are divided into three blocks – Block A, Block B and Block C – each block comprising twelve flats. The Property is a duplex flat, located on the first and second floor of Block C. The parking space demised under the Lease is situated in one of the parking areas in the grounds and was marked with a number '27'.
8. The Tribunal did not carry out an internal inspection of the Property but did inspect the internal common parts of Block C, including the Respondent's front door, and the common grounds. The blocks, gardens and grounds appeared to be well maintained.

The Law

9. The relevant provisions in respect of liability to pay and reasonableness of service charges are found in sections 19 and 27A of the Act (as amended), which are set out as follows:

Section 19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and*
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

(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.

...

10. The relevant provisions in respect of limiting the liability to pay an administration charge in respect of litigation costs are found in paragraph 5A of Schedule 11 of the 2002 Act (as amended), which provides:

Paragraph 5A Limitation of administration charges: costs of proceedings

(1) 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.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

- (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
- (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	“The relevant court or tribunal”
<i>Court proceedings</i>	<i>The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court</i>
<i>First-tier Tribunal proceedings</i>	<i>The First-tier Tribunal</i>
<i>Upper Tribunal proceedings</i>	<i>The Upper Tribunal</i>
<i>Arbitration proceedings</i>	<i>The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.</i>

The Lease

11. The Lease demised the Property, together with the associated parking space, to the lessee for a term of ninety-nine years from 24 June 1983. Although the Lease referred to the Property as being “*Flat Number 27 Swallowfields*”, it confirmed that this numbering was for “*development purposes (but not for postal purposes)*”. The flat was delineated on Plan 2 to the Lease and the parking space was defined as “*being numbered 27 on Plan No.1*”.
12. The lessee, under clause 3 of the Lease, covenanted with the lessor to perform the obligations set out in the Eighth Schedule. Under paragraph 3 of the Eighth Schedule, the lessee covenanted:

“To pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under Sections 146 and 147 of The Law of Property Act 1925 including the reasonable costs charges and expenses aforesaid of and incidental to the inspection of the demised premises the drawing up of schedules of dilapidations and notices and any inspection to ascertain whether any notice has been complied with and such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the court.”

And under paragraph 6:

“To pay to the Lessor the Lessee’s Proportion of the Maintenance Expenses at the times and in the manner herein provided and also to pay any value added tax chargeable in respect of the same.”

13. The services which formed the ‘Maintenance Expenses’ were defined in the Sixth Schedule to the Lease and, although the ‘Lessee’s Proportion’ of those expenses was stated as 4% in paragraph 1 of the Seventh Schedule to the Lease, the Applicant charged a more defined proportion of 3.96%.
14. Paragraph 1.2 of the Seventh Schedule stipulated that:

“If the Lessee shall at any time during the said term object to any item of the Maintenance Expenses as being unreasonable... then the matter in dispute shall be determined by person to be appointed for the purpose by the President for the time being of The Royal Institution of Chartered Surveyors whose decision shall bind both parties Provided Always that any objection by the Lessee under this sub-paragraph shall not affect the obligation of the Lessee to pay to the Lessor the Lessee’s proportion of the Maintenance Expenses in accordance with paragraph 3 of this Schedule...”

And under paragraph 3.1 of the Schedule the lessee was required to pay the Lessee’s Proportion of the Maintenance Expenses:

“In advance on the 24th day of June and the 25th day of December in every year throughout the said term one half of the Lessee’s Proportion of the

amount estimated by the Lessor or its managing agents as the Maintenance expenses for the year ending on the next 24th June...”

The Hearing

15. Following the inspection, a hearing was held via CVP on 18 November 2021. The Applicant was represented by Mr Mills, Miss Insley and Miss Shuter (a Regional Director for Remus). The Respondent gave evidence on his own behalf.
16. The Tribunal confirmed to the parties that, as the accounts had not yet been prepared for the years ending 24 June 2021 and 24 June 2022, in respect of those two years the question for the Tribunal was, under section 19 (2) of the Act, whether the estimated costs requested by the Applicant exceeded a figure which would reasonably be payable under the provisions of the Lease.
17. The Tribunal also confirmed that, as the application related to the reasonableness of service charges, any objection regarding the reasonableness of any administration charges that had been charged to Respondent's service charge account would need to be the subject of a separate tribunal application.
18. In addition, as much of the Respondent's submissions related to historical matters which had occurred well before the three years in question, the Tribunal confirmed that these would not be issues that could be taken into account in the current proceedings, nor could any potential damages claim arising from those historical matters, as this would be an issue for the County Court.

Submissions

Applicant's Submissions on the Service Charge Application

19. Mr Mills, on behalf of the Applicant, confirmed that the application had been made as the Respondent had, over the past two years, failed to settle his service charges in full.
20. Mr Mills confirmed that, although accounts had been prepared for the year ending 24 June 2020, a copy of which were included within the Applicant's bundle, the accounts had not yet been finalised for the year ending 24 June 2021. He also confirmed that only the first half yearly demand had been made for the year 24 June 2022, an amount of £720.41, which related to the period 25 June 2021 to 24 December 2021.
21. Mr Mills referred to the Respondent's Statement of Account, which had also been included within the Applicant's bundle of documents, and stated that the only two payments received over the period in dispute was a payment of £737.75, received in August 2019, and a payment of £859.39, received in February 2020. He stated that no interest had been charged to the Respondent.
22. Mr Mills accepted that a sum of £1,309.46 appeared to have been sent from the Respondent's lender but stated that the Applicant had only received a sum of

£859.39 from its solicitor at the time, Wilton Law LLP ('Wilton'). He was unable to explain why the figure received from Wilton differed from the figure sent by the Respondent's lender, but presumed that the balance related to Wilton's legal costs. He confirmed that, to his knowledge, no administration charge for those legal costs had been demanded from the Respondent.

23. Mr Mills stated that Remus was informed by the Applicant, in August 2021, that as the Applicant intended to commence forfeiture proceedings against the Respondent, Remus should no longer correspond with him nor accept any further payments of service charge.
24. Mr Mills confirmed that Wilton were no longer instructed as the Applicant's solicitors and that he was currently unaware of the appointment of any new solicitors or the commencement of any forfeiture proceedings in the County Court.
25. Finally, Mr Mills disputed any submissions made by the Respondent in relation to the quality of the service provided by Remus in managing the Property and pointed to the fact that no other complaints had been received from any of the other leaseholders in the Development about their service.

Applicant's Submissions on the Paragraph 5a Application

26. In relation to the application made by the Respondent under paragraph 5A of the 2002 Act, Mr Mills referred the Tribunal to the Applicant's written submissions. These referred to the contractual provisions within the Lease relating to the lessee's liability to pay the landlord's litigation costs in paragraph 8 of the Eighth Schedule to the Lease.
27. Mr Mills stated that the correspondence provided by the Respondent clearly indicated there had been a great deal of communication between the Respondent and them over the period in question, prior to the commencement of the tribunal proceedings. He stated that they had only stopped communicating with the Respondent after receiving instructions from the Applicant to do so, on 18 August 2021.
28. Mr Mills stated that the recent correspondence referred to the fact that the Property was in the course of forfeiture and submitted that this was the reason the Applicant was seeking a determination from the Tribunal in respect of the reasonableness of the service charges. Accordingly, he submitted that no order should be made under paragraph 5A of the 2002 Act.

Respondent's Submissions on the Service Charge Application

29. The Respondent confirmed, at the hearing, that he had no objections to the amounts that had been estimated for the service charge budgets in any of the three years in question.
30. In relation to the year ending 24 June 2020, he stated that the only issue in respect of the standard of services in that year related to the painting of his front

door. He had confirmed, in his written submissions, that the contractors employed by the Applicant had not prepared the doors or frames properly for painting and that he had contacted Remus at the time. He stated that Remus agreed that he could paint his own front door and that they would pay him £60 for the same, which was the same amount as they had agreed to pay the contractors. The Respondent stated that he painted the door himself but, to date, had neither received the payment of £60.00 nor a credit to his service charge account.

31. At the hearing, the Respondent referred to possessing email correspondence which, he stated, evidenced the agreement with Remus regarding the £60.00 payment. Mr Mills, on behalf the Applicant, confirmed that, if the Respondent was able produce the correspondence evidencing the agreement, they would honour this payment.
32. In relation to the year ending 24 June 2021, the Respondent referred to an issue with regard to his guttering in December 2020 and, in his written submissions, referred to some noise nuisance. The Respondent did, however, accept that the estimated budget for the service charge for that year was reasonable. He also accepted that the estimated budget for the year ending 24 June 2022 was reasonable and had reported no issues regarding the services thus far for that year.
33. In relation to the standard of maintenance in general, despite the contentions in his written submissions regarding the level of service, at the hearing the Respondent confirmed that, other than the painting of doors and the guttering, he was generally satisfied with the level of service provide by Remus. He also stated that the maintenance had improved over the past three years.
34. The Respondent did refer to not having received the benefit of a parking space for a number of years, as the parking area in which he believed his space was located had been locked due to safety concerns. He stated that this area had recently been reopened.
35. In relation to payment of the service charge, the Respondent confirmed that he had made various payments of service charge in 2019 to bring the account fully up-to-date. He stated that he made a payment of £737.75 in August 2019 and paid a further payment of £600.00 in November 2019, which was subsequently returned to him. In addition, he stated that an amount of £1,309.46 was paid by his lender in November 2019, after Wilton had written to them requesting payment of the same to avoid forfeiture of the Property. Accordingly, he considered that, at this point, not only had his arrears been in paid but that he was, in fact, in credit. As such, he stated that he could not understand the amount detailed as outstanding on his service charge account.
36. The Respondent stated that he was unsure as to why there was a figure of £859.39 on his account but stated that he had queried his account balance on numerous occasions with both Wilton and Remus to no avail. He referred to his service charge account as being “baffling” and stated that, at one point, the

Applicant was trying to charge 8% interest, which they were not allowed to do under the provisions of the Lease.

37. The Respondent provided, within his bundle a number of emails and letters. These included a letter from Wilton, dated 28 November 2019, confirming that his arrears had been settled by his lender and an email that the Respondent had sent to Remus, on 11 November 2020, in which he queried the balance on his account and questioned why the payment from his lender had not been credited to it. He had also queried the administration charges and why he was being charged interest when the Lease did not allow the same.
38. The Respondent stated, at the hearing, that he had offered to make payments of service charge by instalments, however, stated that this had not been accepted by the Applicant and that the Applicant was now refusing to accept any further payments from him.

Respondent's Submissions on the Paragraph 5a Application

39. In relation to his application under paragraph 5A, the Respondent stated that, under the provisions of the Lease, the Applicant should have first referred the matter to the Royal Institution of Chartered Surveyors to try to resolve the matter.
40. The Respondent referred to the inaccuracy in the accounting as being the root cause of the problem. He stated that he had attempted to establish from the Applicant the reasons behind the discrepancy in his service charge account, however, stated that the Applicant had shown little interest in resolving the matter.
41. He also referred to the fact that he had recently offered to make payments but that these had been rejected by the Applicant. Accordingly, he submitted that an order should be made under paragraph 5a of the 2002 Act and that each party should be responsible for their own costs in this matter.

The Tribunal's Determinations

42. The Tribunal considered all of the written and oral evidence submitted, which is briefly summarised above. As previously mentioned, many of the Respondent's submissions related to matters beyond the jurisdiction of the Tribunal in relation to the applications before it, including issues relating to the reasonableness of any administration charges that had already been charged by the Applicant and disputes relating to historical matters unrelated to the service charge years in question.
43. In addition, although the Respondent appeared to have been perplexed by the apparent discrepancy in the definition of the address in the Lease, the Tribunal was satisfied that the Lease made it clear that "*Flat Number 27*" was simply a name given to the Property during the development phase and that the correct postal address of the Property was 37 Sanders Road.

44. The Tribunal was also satisfied that Plan 1 in the Lease detailed that the parking space demised with the Property was located in the parking area opposite to Block C and had not been located within the parking area which had been closed off by the Applicant. The Tribunal accepted that the numbering of the parking spaces would have been, somewhat, confusing to a layperson but considered that any queries the Respondent had in this regard should have been explained to him by his legal advisors on his purchase of the Property, especially since the Property had been registered a number of years prior and the parking space marked on Plan 1 to the Lease corresponded with the parking space edged in red on the Land Registry plan to his leasehold title (Title Number HW57419).
45. The Tribunal did consider that the Applicant should rectify the numbering on the spaces as soon as possible to avoid further confusion.

Applicant's Service Charge Application

46. In relation to these reasonableness of the service charge for the year ended 24 June 2020, the Tribunal noted that the only item in dispute with regard to the services over that period related to the painting of the Respondent's front door.
47. Although the Respondent had not managed to provide the Tribunal with a copy of the email correspondence confirming that the £60.00 payment had been agreed by Remus, it was clear from the Tribunal's inspection that the Respondent had painted his own door and this was not disputed by the Applicant. In addition, the correspondence provided to the Tribunal by the Respondent did make reference to this matter and Mr Mills did not dispute that this was the amount paid to the contractors, nor that Remus had agreed to pay this sum to the Respondent if he painted his own door.
48. Based on the evidence before it, the Tribunal considered that it was unreasonable for the Respondent to have been charged £60.00 for a service which he carried out himself and determined that an amount of £60.00 should be credited to his service charge account.
49. The amount that had been demanded from the Respondent on account for the year ending 24 June 2020 was £1,363.27. The Service Charge Statement of Account for that year, however, detailed that there had been a deficit of £963.60 and, thus, a balancing service charge of £38.16 had been demanded from the Respondent. Taking into account the £60.00 credit determined by the Tribunal, the Tribunal determines that the Respondent was liable to pay to the Applicant an amount of £1,341.43 in respect of the service charge for the Property for the year ending 24 June 2020.
50. In relation to the reasonableness of the service charges demanded for the years ending 24 June 2021 and 24 June 2022, the Tribunal noted that the accounts for these years had not yet been produced and, accordingly, the Tribunal needed to determine whether the estimated costs demanded by the Respondent on account for the services exceeded a figure which would reasonably be payable under the provisions of the Lease.

51. Although the Respondent had referred to issues regarding the drainage and noise nuisance, he had confirmed that he considered the budgets for the service charges for these years to be reasonable.
52. Accordingly, there being no evidence to the contrary, the Tribunal determines that the service charges requested on account for those years was reasonable and that the Respondent is liable to pay to the Applicant the sum of £1,403.66 on account for the services for the year ending 24 June 2021 and a sum of £1,440.81 on account for the services for the year ending 24 June 2022.
53. In relation to the Respondent's Statement of Account, the Tribunal notes that the Applicant does not appear to have ever demanded an administration charge from the Respondent in relation to Wilton's legal costs in 2019/2020. Accordingly, the full amount received from the Respondent's lender in November 2019 of £1,309.46 (not the £859.39 which was detailed on the Respondent's Statement of Account) should have been credited to his service charge account until such an administration charge had been properly demanded from him. Consequently, a credit of £450.07 is due to the Respondent.

Respondent's Application under Paragraph 5A

54. With regard to the Respondent's application under paragraph 5A of Schedule 11 to the 2002 Act, there was nothing to suggest that the Applicant's litigation costs had been demanded by the time of the hearing and the Respondent's application appeared to have been made in anticipation of the same.
55. In relation to whether an order should be made, the Tribunal noted the Respondent's submissions that, under the provisions of paragraph 1.2 of the Seventh Schedule to the Lease, the Applicant should have made an application to RICS prior to commencement of any tribunal proceedings. The Tribunal noted that this was a procedure only open to the lessee (the Respondent) rather than the lessor (the Applicant). In addition, the sub-paragraph specifically stated that it did not affect the obligation of the lessee to continue to pay his proportion of the Maintenance Expenses, which in this case the Respondent had failed to do.
56. The Tribunal also noted the Applicant's submission that the Respondent was liable to pay the Applicant's costs under the provisions of paragraph 3 of the Eighth Schedule to the Lease, however, noted that, although the correspondence from Remus referenced the Property as being in the course of forfeiture, Wilton were no longer instructed by the Applicant and Mr Mills was not aware as to whether the Applicant had instructed any new solicitors or had begun to commence forfeiture proceedings.
57. The Tribunal observed that the Respondent had, since November 2020, been querying the accuracy of the outstanding balance on the service charge account and that at no point did he appear to have received a satisfactory reply to his queries. Had the amount received from the Respondent's lender been fully credited to his account, based on the dates referred to in his Statement of

Account, there would only have been a small deficit (of just under £50.00) on 23 June 2020. In addition, although the Statement of Account provided to the Tribunal did not detail any interest payments as having been charged, the screenshot provided by the Respondent in his correspondence did detail an interest payment of £69.97 in October 2020. The Tribunal considered that the Respondent was justified in querying the same, as interest is not payable under the terms of the Lease.

58. Taking the above into account, the Tribunal considered the Respondent's concerns were legitimate and reasonable and that the application to the Tribunal, and any resulting costs, could have been avoided had the Applicant fully engaged with the Respondent's queries regarding his service charge account.
59. Accordingly, the Tribunal considers it just and equitable to make an order that the Applicant is extinguished from liability to pay any administration charges in respect of any litigation costs in relation to these tribunal proceedings.
60. The parties should note that this is only a decision in relation to the litigation costs in relation to the current proceedings and not a determination in relation to any other administration costs that may have been demanded by the Applicant.

Appeal Provisions

61. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham