

9401



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

**Case Reference** : **LON/00AB/LSC/2013/0506**

**Property** : **GFF, 107 Fanshawe Avenue,  
Barking IG11 8RF**

**Applicant** : **Poloplace Limited**

**Representative** : **Rossides Caine Solicitors**

**Respondent** : **Raman Limited**

**Representative** : **Circle Residential Management  
Limited (Managing Agents)**

**Type of Application** : **Reimbursement of costs**

**Tribunal Members** : **Mr Jeremy Donegan – Tribunal  
Judge  
Mr John Francis – Lay Member**

**Date and venue of  
Paper Determination** : **21 October 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **21 October 2013**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal refuses the Respondent's application for reimbursement of costs under Rule 13 (1) (b) (ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules")

## **The application**

1. By a letter dated 23 August 2013, the Respondent's managing agents ("Circle") applied for reimbursement of costs under Rule 13 (1) (b) (ii) of the 2013 Rules.
2. The tribunal received the application on 30 August 2013 and issued directions on 20 September 2013. The directions provided that the application would be determined on the papers. None of the parties has objected to this or requested an oral hearing. The paper determination took place on 21 October 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The property which is the subject of this application is 107 Fanshawe Road, Barking, Essex IG11 8RF ("the Building") and comprises of two flats. The Applicant is the leaseholder of the Ground Floor Flat at the Building ("the Flat"). The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.
5. The Applicant holds a long lease of the Flat. This requires the Respondent to provide services and the Applicant to contribute towards their costs by way of a variable service charge.
6. On 24 July 2013 the tribunal received applications under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), as to the amount of service charges and administration charges payable by the Applicant. The applications were listed for a case management conference ("CMC") on 15 August 2013.
7. On 09 August 2013, Circle wrote to the tribunal advising that the service charges in question and some of the administration charges were also the subject of proceedings issued in the County Court. Circle contended that the applications should be struck out under Rule 9 (2)

- (a) of the 2013 Regulations and copied the letter to the Applicant and his solicitor.
8. At the CMC on 15 August 2013, the Respondent's representative made an application to strike out the applications. Mr Goraya of the Applicant company accepted that the applications to the tribunal concerned the same issues for the same period as the ongoing County Court proceedings. The tribunal struck out the application under Rule 9 (2) (a) of the 2013 Rules.

### **Submissions**

9. The grounds of the Respondent's application were set out in the letter from Circle dated 23 August 2013. Enclosed with that letter was a bundle of relevant documents, including a schedule of costs.
10. The Respondent contends that the Applicant has acted unreasonably in bringing and proceeding with the applications upon the following grounds: -
- 10.1 Bringing an application without taking steps to resolve the issue beforehand;
- 10.2 Bringing an application which the Tribunal has no jurisdiction to determine;
- 10.3 Continuing with the applications up until the CMC, when the jurisdiction point was conceded.
11. The costs being claimed by the Respondent amount to £1,816.92, including VAT. This represents their costs for preparing for an appearing at the CMC. Of this sum, £1,170 plus VAT relates to travel time for the journeys to and from the CMC, representing 6.5 hours at £180 per hour.
12. The Applicant responded to the application in an email from their solicitors dated 07 October 2013. They oppose the application upon the following grounds:
- 12.1 The applications to the Tribunal had been drafted prior to service of the Respondent's claim in the County Court;
- 12.2 The administration charge application sought a determination of two administration payments relating to a notice of transfer and deed of covenant that do not form part of the County Court proceedings; and

- 12.3 On receiving Circle's letter regarding jurisdiction (on 12 August 2013), the tribunal advised the parties that the letter would be placed on the file for the attention of the tribunal Judge. The Applicant took the view that the CMC was to proceed on 15 August 2013.
13. The Applicant also disputes the amount of the costs being claimed by the Respondent upon the grounds that they are disproportionate and the Respondent could have arranged local representation at the CMC, to save on travel time.
14. Having studied the submissions from the parties and considered all of the documents provided, the tribunal has made the following determination.


### **The tribunal's decision**

15. The tribunal determines that the Applicant has not acted unreasonably in bringing and proceeding with the claim. It follows that the application for reimbursement of costs is refused.

### **Reasons for the tribunal's decision**

16. The original applications were received by the tribunal on 24 July 2013. The County Court proceedings were issued on 26 June and 13 July 2013, respectively. The tribunal has not been advised of the date on which the Court proceedings were served but accept the evidence from the Applicant's solicitor that this was after the applications had been prepared. It follows that the Applicant did not act unreasonably in issuing the applications.
17. Furthermore there is nothing in section 27A of the 1985 Act that prevents an application being made to the tribunal where there are ongoing County Court proceedings that cover some or all of the same issues and which have not been determined. Section 27 A (4) (c) provides that no application can be made in respect of any matter which has been the subject of a determination by a court but in this case there is no suggestion that a court determination has been made.
18. The jurisdiction point was first raised in the letter from Circle dated 09 August 2013. This was received by the tribunal on 12 August and should have come to the Applicant's attention on the same day. Given that the CMC was only 3 days away, the Applicant did not act unreasonably in proceeding with the CMC. It is notable that the strike out application was only made at the CMC and the letter from Circle made no mention of any application for costs.
19. The Applicant acted pragmatically and reasonably in conceding the jurisdiction point at the CMC.

20. Given that the application for reimbursement of costs has been refused there was no need for the tribunal to consider or determine the amount of the costs being claimed by the Respondent.



Handwritten signature of Jeremy Donegan in black ink, consisting of stylized initials and a surname.

**Name:** Jeremy Donegan

**Date:** 21 October 2013

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (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 provisions 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**

- (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.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are



not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

- (b) on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

**Rule 9 (2)**

The Tribunal must strike out the whole or part of the proceedings or case if the Tribunal –

- (a) does not have jurisdiction in relation to the proceedings or case or that part of them; and
- (b) does not exercise any power under rule 6 (3) (n) (i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

**Rule 13 (1)**

The Tribunal may make an order in respect of costs only –

- (a) under section 29 (4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
  - (i) an agricultural and land drainage case,
  - (ii) a residential property case, or
  - (iii) a leasehold case; or
- (c) in a land registration case.