



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

Case reference : LON/00AP/LSC/2014/0279

Property : 1 Wavel Mews, Park Avenue South,
London N8 8LQ

Applicant/claimant : Park Avenue Mews Management
Company Limited

Representative : Mr I J Whittingham

Respondent/defendant : Mr R J Laporte

Representative : No appearance

Type of application : Liability to pay estate charges and
administration charges

Tribunal member(s) : Judge Timothy Powell

**Date and venue of case
management hearing** : 17 June 2014 at
10 Alfred Place, London WC1E 7LR

Date of directions : 17 June 2014

TRIBUNAL'S DECISION

Summary of the tribunal's decision

- (1) The tribunal does not have jurisdiction to deal with the claim issued by the applicant and transferred to the tribunal by the county court;
- (2) This matter should be referred back to the Clerkenwell & Shoreditch County Court (case number 3YK03619) for determination of the claim by the court.

Background to the application

1. On 25 February 2013, the claimant Park Avenue Mews Management Company Limited issued county court proceedings (under case number 3YK03619) against the defendant, Mr R J Laporte, for arrears of "service charges" and administration charges, in respect of Mr Laporte's ownership of 1 Wavel Mews, Park Avenue South, London N8 8LQ.
2. A defence was filed and the claimant filed an allocation questionnaire. By order of District Judge Manners dated 28 May 2013, the matter was transferred to the Leasehold Valuation Tribunal (as it was then known). Regrettably, the court file was lost in the document exchange and a duplicate file was not received by the tribunal (now known as the First-tier Tribunal, Residential Property) until 21 May 2014.
3. An oral case management conference (CMC) was held on 17 June 2014. The claimant (now applicant before the tribunal) was represented by Mr I J Whittingham; the defendant (now respondent before the tribunal) did not attend. As became clear at the CMC, the relationship between the parties is not one of landlord and tenant, because the respondent/defendant is the freehold owner of the subject property, 1 Wavel Mews.

The law

4. Section 18(1) of the Landlord and Tenant Act 1985, as amended, states:

"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".
5. Section 27A of the 1985 Act states:

"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.

The facts

6. Wavel Mews is a private estate of 16 houses built in the 1980s. All the houses on the estate, including the subject property at 1 Wavel Mews,

are freehold properties. The applicant/claimant company holds an interest in the roads that service Wavel Mews and title deeds contain mutual covenants and rights of way, as between the company and the freehold owners of the houses.

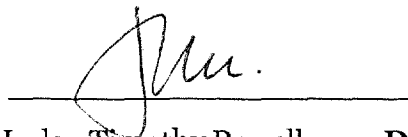
7. The Third Schedule of the official copy of the freehold title to 1 Wavel Mews contains a covenant on the part of the owner, the respondent/defendant Mr Laporte, to pay a rateable proportion of the cost of maintaining the roads on the estate. The "service charges" claimed in the county court proceedings relate largely to such costs.

The tribunal's decision

8. The tribunal determines that it does not have jurisdiction to deal with the claim made by the applicant/claimant and transferred to the tribunal by the court.

Reasons for the tribunal's decision

9. Although termed "service charges", the costs claimed by the applicant/claimant against the respondent/defendant are in fact "estate management charges" payable by a freehold owner of property. Such charges are not "service charges" within the meaning of section 18 of the Landlord and Tenant Act 1985, because the respondent/defendant responsible for paying them is not "a tenant" within the meaning of that section.
10. The tribunal can entertain an application to determine the reasonableness of "estate charges" paid by a freehold owner, but only in very limited circumstances, where they arise under an estate management scheme, pursuant to section 159 of the Commonhold and Leasehold Reform Act 2002.
11. Section 159 only extends to estate charges arising from schemes that have been approved by the High Court under section 19 of the Leasehold Reform Act 1967, or approved by this tribunal under Chapter 4 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (see section 69 of that Act), or under section 94(6) of the 1993 Act. None of those appear to apply in the present case.
12. Accordingly, the tribunal has no jurisdiction to determine the payability or the reasonableness of the estate charges sought by the applicant/claimant and must decline to accept the transfer from the county court.
13. This matter should now be returned to the Clerkenwell & Shoreditch County Court for determination of the claim.



Name: Judge Timothy Powell **Date:** 17 June 2014