



12083

**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : **CAM/22UH/LSC/2016/0066**

**Property** : **124 Trotwood,  
Chigwell,  
Essex IG7 5JP**

**Applicant  
Represented by** : **Gargill Flat Management Co. Ltd.  
Christopher McCarthy of counsel (Crooks  
Commercial Solicitors Ltd.)**

**Respondent** : **Karen Lebor (sued as Susan Karen Krimgoltz  
(nee Spitalnik))**

**Represented by** **Jeremy Lebor (lay representative)**

**Date of transfer from  
the county court at  
Romford** : **8<sup>th</sup> September 2016**

**Type of Application** : **To determine reasonableness and  
payability of service charges and  
administration charges**

**The Tribunal** : **Bruce Edgington (lawyer chair)  
Marina Krisko BSc (Est. Man.) FRICS  
John Francis QPM**

**Date and venue of  
hearing** : **13<sup>th</sup> December 2016 at Romford County Court,  
2a Oaklands Avenue, Romford RM1 4DP**

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**DECISION**

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1. In respect of the amount claimed from the Respondent in service charges and administration charges for the years set out in the claim up to 31<sup>st</sup> March 2016, the amount which the Tribunal considers to be payable is £3,286.46 made up as follows:-

	£
Brought forward figure as at 01/04/12	1,014.28
3/48 <sup>th</sup> of service charges for y/e 31/3/13	1,000.00
3/48 <sup>th</sup> of service charges for y/e 31/3/14	1,207.50
3/48 <sup>th</sup> of service charges for y/e 31/3/15	1,171.89
4 demands for service charges on a/c up to 31/03/16 (£327.47 each)	1,309.88

3 x administration fees at £240 each		<u>720.00</u>
		6,423.53
Less:-	credit	1,131.63
	Payment	<u>2,005.44</u>
		<u>3,137.07</u>
Balance due		3,286.46

- The claim for "Costs incurred as per the terms of the lease incurred in having to bring these proceedings at £858" cannot include legal fees as the lease does not provide for such fees to be collected as administration charges.
- The Birmingham and Midshires Building Society of PO Box 833, Leeds LSi 9PU is hereby ORDERED to send a letter to their client, the Respondent in this Application under account number 020005560934, within 28 days of being notified of this Order, giving full details of payments respectively made on or about the 19<sup>th</sup> March 2015 (£2,116.00) and the 3<sup>rd</sup> February 2014 (£2,005.44) i.e. to whom they were made and exactly what they had been told that they were intended to be for. Copies of the demands for those payments shall be annexed to such letter.
- This matter is now transferred back to the county court sitting at Romford under claim number CoQZ82To so that any matters not dealt with in this decision such as statutory interest, costs recoverable in the court action and enforcement can be dealt with.

### Reasons

#### Introduction

- The Applicant is a management company which is a party to a tri-partite lease dated 30<sup>th</sup> December 1983 under which it is responsible, under the terms of such lease, for maintaining and insuring the development in which the property is situated. It claims arrears of service charges and administration charges totalling £4,475.00 and issued court proceedings on the 3<sup>rd</sup> June 2016 against the Respondent claiming this amount plus statutory interest, court fee and costs.
- The 'defence' filed is dated 1<sup>st</sup> July 2016. It simply says that the Applicant, through its managing agents and solicitors, has been asked for information about the service charges but has not provided 'suitable' answers.
- The order from the court simply says "*Transfer to Leasehold Valuation Tribunal*". In the Tribunal's directions order dated 20<sup>th</sup> September 2016, it was stated that the Tribunal interpreted this order as a request by the court for the Tribunal to determine the reasonableness and payability of the service charges and administration charges. The only thing a court can transfer is so much of a case which enables the Tribunal to determine a 'question' within its jurisdiction. Payability is within its jurisdiction but this generally only relates to the reasonableness of the service charges and whether the lease allows them to be claimed i.e. matters which an expert Tribunal is equipped to deal with. For the avoidance of doubt such matters as the recovery of court fees, costs of the court action, statutory interest and enforcement are matters which remain in the court's jurisdiction.

8. The said directions order required both parties to set out their respective cases in writing. The Applicant has done so by pointing out that requests for information and documents have been received and copies of replies and accounts/budgets as sent to the Respondent are supplied.
9. The order, so far as the Respondent is concerned, says "*the Respondent, having considered the Applicant's evidence, shall, by 4.00 pm on the 21<sup>st</sup> October 2016, file with the Tribunal office and serve on the Applicant a statement which sets out, in respect of each claim for service charges and/or administration charges, whether they are being challenged. If so, exactly why and what would the Respondent consider to be a reasonable amount*". No such statement has been filed or served. Mr. Lebor said, in effect, that this was because the Applicant's statement was late but it had certainly arrived by the 21<sup>st</sup> November (see below) and the Respondent had been reminded in the Tribunal's directions order in September that she had a right to inspect the supporting invoices for the service charges which, it seemed, was all she wanted to do. The Applicant has said that it would have allowed such an inspection.
10. On the 21<sup>st</sup> November 2016, an e-mail was received by the Tribunal office from Jeremy Lebor, the Respondent's husband. On the 24<sup>th</sup> February 2016 (page 98), he said in a further e-mail to those solicitors that "*Like you, I work in the legal profession...*". The e-mail to the Tribunal says that he has discovered that £2,116.00 was paid by the Respondent's mortgagee on 19<sup>th</sup> March 2015 "*specifically for Service Charge and not for Ground Rent as set out in the Statement of the applicant at point 7, dated 7<sup>th</sup> October 2016*". Mr. Lebor asks for an adjournment so that he can obtain written confirmation of this which, he said, would arrive within 10 days i.e. before the date of the hearing.
11. A letter was written by the Applicant's solicitors pointing out that the money recovered from the mortgagee was for ground rent plus legal costs only. The decision was taken to refuse the application to adjourn. In fact, there is further evidence in the bundle (see below) that the £2,116.00 was paid to the landlord's solicitors for ground rent and costs payable as relief against forfeiture.

### **The Inspection**

12. As the Respondent had not set out what service charges were disputed, the Tribunal determined that a pre-hearing inspection of the property would not assist. The parties were told that an inspection after the hearing would be undertaken if it was necessary for the purpose of this decision. In the event, it was not necessary.

### **The Lease**

13. As has been said, the lease is dated 30<sup>th</sup> December 1983 and is for a term of 99 years commencing on the 25<sup>th</sup> December 1981. It is in modern tri-partite form with a landlord, a tenant and the management company. The Applicant is named as the management company. A copy of the lease is in the bundle provided for the Tribunal although some of the pages are illegible.
14. There are the usual covenants on the part of the management company to maintain the common parts and structure of the property and to insure it. As no

issue is raised in the defence about any particular item of service charge, these reasons will not repeat the relevant provisions in the lease.

15. The service charge arrangements are set out in Part IV of the Schedule. They provide that the share of the overall service charges payable by the Respondent is "three forty eighth parts". The management company's auditor shall certify the service charges as at the end of the service charge period which ends on the 31<sup>st</sup> March in each year.
16. The Applicant's statement of evidence is somewhat difficult to read as it is so faint. However, so far as the administration charges as legal costs are concerned, the Applicant relies upon clause 2(2) of the lease and the quoted part of that clause is "*pay and discharge and keep the Lessor and Company indemnified from and against all existing and future rates taxes duties charges assessments impositions and outgoings whatsoever*". The actual clause adds the words "*(whether imposed by statute or otherwise and whether of a National or Local character and whether of the nature of capital or revenue and even though of a wholly novel character)*". In other words this clause relates to charges imposed on the property. The Upper Tribunal has said on many occasions that if legal fees are claimed, the wording allowing such a claim has to be clear and unambiguous. The quoted clause makes no reference to legal fees.
17. The other clause upon which the Applicant seeks to rely is not identified, but the quotation in the statement of evidence at page 9 in the bundle appears to be from clause 2(5). The quotation in the statement says "*pay all costs charges and expenses (including Solicitors costs and Surveyors fees) relating to the preparation and service of a notice pursuant to section 146 of the Law of Property Act 1925*". Reference is also made to the well known **69 Marina v Oram** case.
18. Once again, the Applicant has misquoted the lease. The clause actually says "*pay all costs charges and expenses (including Solicitors costs and Surveyors fees) incurred by the lessor...*" (emphasis added). The Applicant is not the lessor and cannot serve a section 146 Notice on its own behalf as it cannot claim forfeiture. Indeed there is evidence in the bundle that the lessor has already served such a notice and recovered the costs thereof. It is at page 97 in the bundle and is a letter from the lessor's solicitors to the managing agents which says, amongst other things, that the Respondent's mortgagee "*paid the sum of £2116.00 in respect of arrears of Ground Rent and costs required as a condition of relief from forfeiture and the claim was discontinued by way of service of Notice filed and served on 27<sup>th</sup> March*".
19. As far as administration charges are concerned, counsel for the Applicant said that he relied upon clause 2(12) which is, in effect, an indemnity against actions claims and demands in respect of any breach of covenant. However, once again, the indemnity is in favour of the Lessor.
20. In fact, the clause which appears to give the Applicant the power to recover administration charges is at the end of page 4 of the lease which has not been copied properly and the numbering has been missed out. However, the Tribunal concludes that this is a covenant by the Lessee to indemnify the Applicant against

all costs charges and expenses in undertaking its obligations under the lease, which would include the administration charges claimed in the service charge account.

### **The Law**

21. Section 18 of the **Landlord and Tenant Act 1985** ("1985 Act") defines service charges as being an amount payable by a tenant to a landlord – or a management company appointed to deal with service charges in the lease – as part of or in addition to rent for services, insurance or the costs of management which varies 'according to the relevant costs'.
22. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
23. The **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") gave the Tribunal the same powers to assess the reasonableness and payability of administrations charges which would include fees and costs incurred because of an alleged breach of the terms of the lease.

### **The Hearing**

24. The hearing was attended by Mr. Christopher McCarthy of counsel and Mrs. Taylor from the managing agent on behalf of the Applicant. The Respondent did not attend but her husband, Jeremy Lebor, did.
25. Mr. Lebor started the hearing by agreeing that he was an advocate in family cases for solicitors. He tried to introduce new documents from his wife's mortgagees, Birmingham and Midshires Building Society which, he said, cast doubt on the how the payments they had made on the 19<sup>th</sup> March 2015 (£2,116.00) and 3<sup>rd</sup> February 2014 (£2,005.44) had been applied. The payment of £2,005.44 was said to be for ground rent. He said that there had been a conversation on the telephone when the Respondent or Mr. Lebor were said to have been told that the £2,116.00 was in respect of service charges only. In essence, Mr. Lebor was saying that the sum of £2,116.00 had to be deducted from the claim. He could not seem to accept that the other payment of £2,005.44 would then have to be paid to the landlord if it was for ground rent. On Mr. Lebor's case it should not have been deducted from the service charge account in the first place and the Respondent will therefore have to make an additional payment to the service charge account to cover that figure.
26. Mr. Lebor could not explain why he or his wife had not filed and served a statement save for saying that he had only received the papers a few days prior to the hearing. That does not appear to be correct as his letter to the Tribunal of the 21<sup>st</sup> November 2016 says "*...when preparing the replies to the Statements made by the Solicitor's on behalf of the applicant...*".
27. That letter goes on to refer to the £2,116 payment and to the fact that a Gareth Williams of Birmingham and Midshires Building Society had said that written confirmation of the statement that the £2,116 had only been made for service charges would take 'up to' 10 days to be received. That assertion also changed

because Mr. Lebor then told the Tribunal that this information would not be released without an order from the Tribunal. Why a building society would not write to its own client setting out the circumstances of a payment made and debited to the mortgage account was simply not understood. However, as is seen above, an order has been made as requested which was not objected to by the Applicant.

28. There was then a discussion about the figures produced by the Applicant and, in particular, their 14 page list of bookkeeping entries which was confusing not only to the Respondent but also to the Tribunal. In particular it was pointed out that the Tribunal was troubled by 2 identical entries on pages 18 (10/01/2013) and 22 (13/02/2014) respectively which read "Credit – 2012/13 budget raised twice". The figure against both entries is £1,131.63 but in 2013 it was a credit and in 2014 it was a debit. It had been admitted that the reason for the 1<sup>st</sup> credit was that the figures had been charged twice but there was no real explanation as to why the 2<sup>nd</sup> 'credit' entry was in fact recorded as a debit.
  29. Counsel seemed equally as nonplussed as the Tribunal and asked for time to consider this with Mrs. Taylor who said that she could work out the figures within 5 minutes. The Tribunal did decide to give the parties 20 minutes to deal with this and see if some sort of agreement could be achieved on the basic figures as Mr. Lebor had indicated that all he was arguing about was the payment of £2,116. The Tribunal was then asked for further time and eventually gave almost an hour. It became clear that agreement could not be reached and the parties were asked in again.
  30. There was still no satisfactory explanation about the credit and debit referred to and Mrs. Taylor then set out some different figures as to what was owed which did not seem to tally with the claim of £4,475.00 on the court claim form. Mr. Lebor said that his case was that he accepted that his wife owed £4,311.16 up to the 31<sup>st</sup> December 2016 and the sum of £2,116.00 should be deducted from that as the building society had said that this was for service charges. This left a balance of £2,195.16 but this included everything up to the end of 2016.
  31. Whilst the parties were in discussion, the Tribunal decided to work out what had been incurred by way of service charges for the period 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2015. This information came from the audited service charge accounts on the papers. The figures claimed from 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016, i.e. the end date for the court claim, were on account of future service charges and the demands were in the bundle commencing at page 88.
  32. On the resumption of the hearing, Mrs. Taylor confirmed that when the building society paid £1,580.02 earlier, this figure had been credited to the service charge account leaving a brought forward arrears figure of £1,014.28 which is seen on page 16 as the amount outstanding on 1<sup>st</sup> January 2012.
- Discussion**
33. As far as the administration fees were concerned, these totalled £600 plus VAT i.e. £720. It was clear to the Tribunal that the managing agents had been incurred in a considerable amount of extra work in respect of this matter over a number of years and they found, on balance, that this was a reasonable figure.

34. Turning now to the payments made by Birmingham and Midshires Building Society, Mr. Lebor produced a financial statement from them showing that the payment of £2,005.44 was for ground rent whereas everyone knew at the hearing, including Mr. Lebor, that this sum, less the administration fee, had been credited to the service charges. There was also the letter from W.H. Matthews & Co., solicitors for the landlord Sinclair Gardens Investments (Kensington) Ltd. dated 16<sup>th</sup> June 2015 to the managing agents stating categorically that the £2,116 payment was "*in respect of the arrears of Ground Rent and costs required as a condition of relief from forfeiture and the claim was discontinued*". The solicitors say that they were in communication with the Respondent throughout the proceedings which seems to have been correct as Mr. Lebor said that his wife had paid an additional £1,500 which he said was in respect of costs.
35. The correspondence with the solicitors is important for another reason. It is clear from that letter that there had been forfeiture proceedings. The only amount payable to the landlord was ground rent. Forfeiture cannot be exercised unless the amount involved exceeds £500 (section 167 of the 2002 Act). The unchallenged evidence of the Applicant at page 6 in the bundle is that the Respondent acquired her interest in the leasehold title on 24<sup>th</sup> October 2010 which meant that she would have been liable for ground rent at £60 per annum up to 25<sup>th</sup> December 2013 and £120 per year thereafter. Thus, the landlord appears to have taken the 1<sup>st</sup> possible opportunity to proceed by way of forfeiture which means that the Respondent has personally paid very little, if anything, for all that time by way of ground rent or service charges.
36. Thus, however much sympathy one may have for the Respondent in understanding the Applicant's book keeping, it has always been open to the Respondent to ask to see the supporting invoices. There was no obligation on the Applicant to just send copies to her. She was reminded of this by the Tribunal in its directions order on the 20<sup>th</sup> September 2016 and yet she does not appear to have made any effort to undertake this task.

### **Conclusions**

37. The Tribunal concludes that the Respondent's 'defence' has little or no merit. She has failed to make any effort to go and inspect any invoices about which she has doubt and she appears to have steadfastly refused to pay anything towards either the ground rent or the service charges since 2010. This, coupled with the attitude at the hearing i.e. that there was no real dispute about the total service charges, merely about how a payment from the building society had been allocated, confirmed that view.
38. On the other hand, the Tribunal could not fathom out how the claim had been calculated. It concluded that the only thing it could do was to start from the beginning and use the audited accounts up to 31<sup>st</sup> March 2015, the demands for money on account for the following year plus the evidence from the Applicant as to the starting arrears figure and the payments made. All of those figures are set out in the decision above. There will be payments due after 31<sup>st</sup> March 2016 and, presumably, a reconciliation following the production of audited accounts for the year ending on that date. Mr. Lebor indicated that his wife had received a demand for £4,311.16 up to the end of December 2016 which, save for the proper

allocation of payments from the building society, seemed to be accepted.

39. The Applicant is not entitled to any legal costs as a matter of contract i.e. as administration charges, for the reasons set out above. It will be a matter for the court as to whether anything is awarded for statutory interest, the court fee and costs in the proceedings themselves.

.....  
**Bruce Edgington**  
**Regional Judge**  
**15<sup>th</sup> December 2016**

#### **ANNEX - RIGHTS OF APPEAL**

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. 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.
- iv. 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.