



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at
Manchester, sitting at Nottingham
Court Centre**

Tribunal reference : **BIR/00FY/LIS/2019/0017**

Court claim number : **E68YM278**

Property : **65 Crusader House, Thurland St,
Nottingham NG1 3BT**

Applicant/Claimant : **Crusader House and George Street
Trading House RTM Company Ltd**

Representative : **Watson Property Management**

Respondents/Defendants : **Mr Eric Owen (1) and Mrs Diane
Owen (2)**

Representative : **None**

Tribunal members : **Judge C J Goodall and Mr G
Freckelton**

In the county court : **Judge C J Goodall (sitting as a
Judge of the County Court
(District Judge), with Mr G
Freckelton as assessor**

Date of decision : **16 September 2019**

DECISION

Summary of the decisions made by the FTT

1. The following sum is payable by the First Respondent by :
 - (i) Service charge for 2017/18: £1,703.20;
2. The following additional sums are payable jointly and severally by the First and the Second Respondents by :
 - (ii) Service charges for 2018/19: £1,802.18;
 - (iii) Administration charges: £445.20;

Summary of the decisions made by the County Court

3. The following sum is payable jointly and severally by the First and Second Respondents;
 - (iv) Court fee: £205.00.

Background

4. The applicant landlord issued proceedings against the Respondents on 15 November 2018 in the County Court Business Centre under claim number E68YM278. The Respondents filed a Defence dated 12 December 2018. The proceedings were then transferred to the County Court at Manchester and then to this tribunal by the order of District Judge Woodward dated 16 April 2019.
5. The tribunal issued directions and the matter eventually came on for hearing on 16 September 2019.
6. The subject property is 65 Crusader House, Thurland St, Nottingham NG1 3BT. This is an apartment within the residential complex at Crusader House situate in the Lace Market in Nottingham. There are 90 apartments altogether in Crusader House and a further 58 apartments in another complex in George St, Nottingham, both of which are managed together.
7. The respondent holds a long lease of the subject property, which requires the Applicant to provide services and for the Respondents to contribute towards their costs by way a variable service charge. The Applicant is an RTM company which has taken over the management responsibilities of a management company specified in the Lease. It is not the freeholder, which is a different company and which has not been involved in this dispute. The specific provisions of the lease will be referred to below, where appropriate.

8. The claim against the respondent in the County Court comprised of the following:
 - (i) A service charge amounting to £3,505.20;
 - (ii) Administration charges of £478.20;
 - (iii) Court fee of £205.00;
 - (iv) Although there is a reference to statutory interest being payable under a covenant in the lease, there is no claim for interest in the prayer in the Particulars of Claim;
 - (v) Although there are references in the Particulars of Claim to covenants to pay costs, there was no prayer in the Particulars of Claim for costs nor were costs claimed on the Claim Form.
9. The order transferring issues to the tribunal was in very wide terms: “The matter to be remitted to the First Tier Tribunal Property Chamber.”
10. All First-tier Tribunal (“FTT”) judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.
11. Accordingly, the Tribunal wrote to the parties on 8 May 2019, and confirmed in Directions dated 7 June 2019, informing them that all the issues in the proceedings would be decided by a combination of the FTT and the Tribunal Judge member of the FTT sitting as a Judge of the County Court.
12. Accordingly, Judge Goodall presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court. The tribunal member, Mr G Freckelton, was appointed as assessor for the County Court trial.
13. In the Directions of 7 June 2019, the Respondents were ordered to provide details of their case in relation to both the service charges and the administration charges claimed by 12 July 2019. They have failed to do so. The Applicant was ordered to provide details of any interest it claimed not less than 7 days prior to the hearing. It failed to do so.
14. At the hearing, there was no appearance by the Respondents. The Applicant was represented by Ms A Riaz, a credit control legal advisor employed by the Applicants agent, Watson Property Management (“the Manager”).
15. This decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The issues & decisions (FTT)

Service charges

16. The Tribunal is satisfied that by virtue of clauses 3.2 and the operation of Part 2 of Schedule 4 of the Lease dated 17 June 2003 under which the Respondents are the lessees, that they are contractually obliged to pay the estimated expenditure proposed to be incurred by the Applicant in providing the services set out in Schedule 5.
17. In a statement made by Ms Riaz, the Applicant provided a budget service charge for the service charge years 1 April 2017 – 31 March 2018, and for 1 April 2018 – 31 March 2019 comprising budgeted expenditure for 2017/18 of £1,903.21 and for 2018/19 budgeted expenditure of £1,802.17. The budgets identify the cost centres for which services are to be incurred, and correctly apportion the contributions of the Respondents as set out in Schedule 5 of the Lease. As it has not been requested to do so, the Tribunal has not examined the amounts in detail. It is not the Tribunal's responsibility to investigate the quantum of the budgets of its own volition.
18. The statement also shows that on 4 September 2017 the Manager applied for payment of service charges from the First Respondent in proper form of £1,903.20 for the 2017/18 year. There is no demand seeking payment of the 2017/18 service charge from the Second Respondent.
19. The Respondents paid £200.00 towards their service charges on 3 November 2017.
20. The Manager applied for payment from both Respondents of half of the 2018/19 charge (£901.09) on 11 April 2018, and the other half on 4 September 2018.
21. There have been no further payments from the Respondents.
22. In their defence, the Respondents say that Mrs Owen no longer has any "right to rents" from the property. There is no documentary evidence, nor is there a fuller explanation, of what "right to rents" means. The Tribunal is unable to determine that Mrs Owen (who is a joint lessee in the Lease) is absolved of liability to pay service charges without better evidence of exactly what transaction occurred and when.
23. The Defence also says that no demand for the 2017/18 service charge was served upon the Second Respondent. It is correct that the invoice for that charge (see paragraph 16 above) was only addressed to the First Respondent. The Second Respondent cannot be liable to pay a service charge for a sum that was not demanded from her.

24. The Tribunal is satisfied that, in the absence of any particular challenge to any element of the service charges from the Respondents, the service charge invoices for estimated expenditure in respect of the service charge years 2017/18 and 2018/19 have been properly demanded from those to whom they are addressed, and are properly due. We therefore determine that the First Respondent is liable to pay service charges to the Applicant for both of those years in the sum of £3,505.20. The Second Respondent is liable to pay a service charge for 2018/19 to the Applicant in the sum of £1,802.18 jointly with the First Respondent.

Administration Charges

25. Ms Riaz explained the Managers credit control procedures in the event of non-payment. An initial letter is sent requesting payment if an invoice is not paid, and then 7 days or so later, a further reminder is sent. The second letter is only sent after a full review of correspondence by credit control personnel.

26. A final reminder is then sent following review by a senior person in the credit control team and following a further review of all correspondence and information about the debtor. At that point the client is also notified so that any decision about proposed action can be confirmed by the client. After that, a letter before action is sent, any mortgagee is notified of the proposal to bring proceedings with a view to forfeiture, and a county court claim is prepared, including the drafting of particular of claim. In order to obtain as full a picture as possible of the debtor's circumstances, up to date land registry title entries are obtained as appropriate.

27. The fees for these actions are:

First letter	£12.00 (not charged if payment is received)
Second letter	£49.20
Final reminder	£70.80
Notice to client	£24.00
Notice to mortgagee	£33.00
Land registry copy title	£3.00
Letter before action	£69.00
Preparation of court pack	£181.20

28. The Manager's agreement with the Applicant requires the Applicant to pay these fees in the event that they are not recovered from the debtor.

29. By an invoice dated 11 April 2018, the Manager made a proper demand for payment of £373.20 in administration charges from the Respondents for a first reminder, a second reminder, a final reminder, a notice to client, a notice to mortgagee, a land registry fee, and the preparation of a court pack.

30. By an invoice dated 4 September 2018, the Manager made a proper demand from the Respondents for payment of £72.00, being a letter before action fee and a copy of the land registry title.
31. No payment has been made of these two invoices.
32. The Tribunal is satisfied that the Applicant may charge a fee under clause 3 of Schedule 3 of the Lease for these services. In the absence of any challenge by the Respondents, the Tribunal is satisfied that the level of the fees is reasonable. We determine that the Respondents are liable to pay administration charges to the Applicant in the sum of £445.20. The difference between the sum claimed by the Applicant and the sum allowed is £33.00 for a second notice to mortgagee fee. It appears that no request for payment of a second notice to mortgagee fee had ever been made of the Respondents (though it has been applied to their account), and so Ms Riaz withdrew that element of her claim.

The issues & decisions (County Court)

Interest

33. No claim for interest was made in the prayer in the Particulars of Claim. The basis for any interest claim was not set out as required in CPR Rule 16. No schedule of interest claimed, as directed by the Tribunal, was provided. The court does not award interest to the Applicant.

Costs

34. A court fee of £205.00 had been incurred by the Applicant. The court orders that the Respondents should pay this amount to the Applicant.
35. The Manager produced a schedule of costs (which had been sent to the tribunal offices and to the leaseholder a week before the final hearing) amounting to £1,456.92.
36. The Applicant relied on clause 3 of Schedule 3 of the Lease which, it said, entitled it to an indemnity for the cost incurred by the Applicant or the Applicant's solicitor in enforcing the payment of any service charge or other monies payable under the terms of the Lease.
37. The costs schedule had been prepared as if the costs were costs incurred by a solicitor or other person qualified to provide legal advice, charged on a time basis at a rate of £140 per hour. Had the Manager engaged solicitors, or had they employed solicitors in their credit control department, the court would have assessed the costs as requested.

38. Ms Riaz however confirmed that the Manager did not employ qualified lawyers in its credit control department. The question therefore arises as to whether the Manager falls into the category of providers of professional legal services whose fees can be claimed as costs in county court proceedings. Is it authorised to conduct litigation under the Legal Services Act 2007? This is a grey area. (see for instance *Kassam v Gill – Birmingham County Court Case no E3PP8048*). It seems clear that the fees of a McKenzie friend may in any event not be recovered from an opposing party.
39. One would also normally have expected the Applicant to include a claim for contractual costs in its Particulars of Claim. There was none.
40. Mr Riaz said that the Manager would normally charge its credit control department costs as an administration charge.
41. Judge Goodall decided not to award costs as the Applicant failed to persuade him (either in its statement in support or in submissions at the hearing) that he had jurisdiction to do so. This decision does not affect the Applicant's right to seek recovery of the charges made by the Manager for its conduct of these proceedings as an administration charge (if it wishes to do so), with the Respondents having the right to challenge that charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 if they wish to do so.
42. The costs issue is therefore limited to the decision that the Respondents must pay the court fee of £205.00.
43. Given that the FTT has made a decision regarding the Service Charges and Administration Charges, the Applicant is entitled to a judgement in that sum, and to reimbursement of the court fee. A separate County Court order, reflecting this decision is attached.

Name: Judge C Goodall

Date: 16 September 2019

Rights of appeal

Appeals in respect of decisions made by the FTT

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).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.