FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at Torquay & Newton Abbot sitting remotely by CVP Hearing

Tribunal Reference	:	CHI/40UE/LSC/2020/0101
Court Claim Nos	:	G8QZ447Y
Property	:	Sunhill, 19 Alta Vista Road, Paignton, Devon, TQ4 6DA
Applicant/Claimant	:	Martin Woodhead (Tribunal Appointed Manager)
Respondents/Defendants	:	Michael Morgan and Barbara Morgan
Type of Application	:	Transferred proceedings from County Court in relation to service charges
Tribunal Members	:	Judge C A Rai (Chairman) Robert Brown FRICS (Chartered Surveyor)
In the County Court	:	Judge C A Rai sitting as Judge of the County Court exercising the jurisdiction of a District Judge
Date and venue of Hearing	:	10 December 2020 by remote CVP Hearing
Date of Decision	:	29 December 2020

DECISION

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Summary of the decisions made by the FTT

1. The Respondents are liable to pay the service charges of £7,000 due on 1 January 2020 and demanded by the Applicant for their seven flats at the Property.

Summary of the decisions made by the County Court

2. Service charges of £7,000;
3. Interest from the 1 January 2020 until 9 March 2020 at calculated at 8% (£104.33) with interest from the 10 March 2020 until the date of judgement at the daily rate of £1.53; and
4. Court fee of £410.

Background

5. The Applicant, the Tribunal Appointed Manager of the Property, issued proceedings against the Respondents in the County Court Business Centre, under claim number G8QZ447Y.

6. The Respondents filed a defence dated 25 March 2020 and reserved the right to make a counterclaim (which was not subsequently made).

7. The proceedings were transferred by the County Court at Torquay & Newton Abbot to the First-tier Tribunal by an Order made by District Judge Eaton-Hart on 25 August 2020.

8. The subject property is Flats 1, 5, 6, 7, 8, 9 & 12 Sunhill, 19 Alta Vista Road, Paignton, Devon TQ4 6DA.

9. The Respondents hold long leases of 5 of the flats and are the freeholders of the other 2 flats. The leases require the freeholder to provide services and for the lessee to contribute towards his costs by way of a variable service charge. The Applicant was appointed by the Tribunal to manage the flats at 19 Alta Vista Road Paignton Devon on 10 December 2012.

10. The claim in the County Court against the Defendants comprised of the following:-
    - £7,000 for service charges
    - interest on arrears of service charges
    - costs of the action.

11. The Order transferring the claim to the First-tier Tribunal was in wide terms:
    "The Claim be transferred to the First Tier Tribunal, (Property Chamber) to resolve all aspects of the claims within the jurisdiction of the Tribunal. A Judge of the Tribunal sitting as a County Judge exercising the jurisdiction of a District Judge in accordance with the County Courts Act 1984 as amended by the Crime and Courts Act 2013 can determine any aspects of the claim outside the Tribunal's jurisdiction".

12. 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 interest or costs that would not normally be dealt with by the Tribunal.

13. Directions dated 29 October 2020 were made by Judge Tildesley OBE confirming that a Tribunal Judge would decide all the issues and notified the parties of the date and time of the Hearing. The parties were directed to exchange their statements of case with copies of all documents on which each wished to rely and any witness statements. The Applicant was charged with the preparation of a hearing bundle and submitting it to the Tribunal by 3 December 2020. The proceedings were allocated to the Small Claims Track.

14. Accordingly Judge C A Rai presided over both parts of the hearing which has resolved all matters before both the Tribunal and the Court.

15. This decision will act as both the reasons for the FTT decision and the reasoned judgement of the County Court.

The Hearing

16. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was CVP, (Cloud Video Platform) V (video all fully remote). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that we were referred to were in a single bundle of 124 numbered pages All references to page numbers in this decision are to that bundle.

17. The Hearing took place on 10 December 2020 starting just after 10:00 am and ending just before 11:00. The Respondents had not logged into the video hearing by the allotted start time so the Digital Support Officer tried to contact the Respondents by telephone but was unable to obtain a reply.

18. The Tribunal office received an email from M. Morgan at 10:50 on 27 November 2020 which referred to Claim No G8Qz447Y and a 2015 Tribunal case reference and stated "this claim was transferred to First-tier Tribunal under Case Reference CHI/00HH/LIS/2015/0001 and 0007 – type of application 'Variation of Management Order' dated 13 September 2020. Mr Woodhead has indicated that a decision has been made in his favour."

19. The Tribunal office responded to Mr Morgan by email on 1 December 2020 referring to the correct reference for these Tribunal proceedings and the County Court claim and it enclosed another copy of its letter dated 3 November 2020 confirming that the case was due to be heard on 10 December 2020 and that no decision has been made yet. That email confirmed that the Tribunal expected the electronic bundle to be submitted by 3 December 2020 and that a link to the hearing room would be sent by 8 December 2020.

20. M. Morgan sent two emails to the Tribunal on 7 December 2020. The first email referred to the address of the property and the Claim Number and stated “Although this is not part of our evidence in the current case, we would appreciate if the judge had the opportunity to consider the following”:.... and he set out a statement unconnected with the subject matter of this claim.

21. The second email referred to the Claim Number and the incorrect Case Reference and stated, “why has Mr Woodhead declared that a decision has been made in his favour, when you tell me that is not the case?”

22. The Tribunal office sent a link to the Respondents on the 8 December 2020 which contained information to enable them to join the Hearing Video Link.

23. Having considered rule 34 of its Procedure Rules **(The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [SI 1169]** the Tribunal was satisfied that reasonable steps had been taken to notify the Respondents of the time and date of the Hearing and it considered it was in the best interest of justice to proceed with the hearing.

24. Following the conclusion of the Hearing the Tribunal office received another email from M. Morgan which stated “I am confused. I haven’t received any submissions by post and last night I received an email advising that the hearing was deferred to 19 Dec”.

25. The email from the Applicant with which the hearing bundle was sent to the Tribunal was copied to the Respondents at the correct email address on 2 December 2020. The email containing the hearing link was sent by the Tribunal office to both the Applicant and the Respondents on 8 December 2020.

FTT- issues and Decision with reasons

26. The Applicant was appointed by the Tribunal to manage the Property on 10 December 2012 for a term of three years, later extended until 31 December 2020, by a variation dated 16 November 2015. The management order has not been discharged and the Applicant was the Tribunal appointed manager at the date of the Hearing. The service charges which the Respondents have not paid were demanded by the Applicant on or about 1 January 2020.

27. The Respondents have not challenged the legitimacy of the service charge demands. His defence to the County Court claim refers to:-

- Bad weather in 2019
- An accident in August 2019
- Unlawful signs within the building
- The removal of a mobility scooter from outside one of the Respondents flats
- Expenses relating to internal repairs to two flats and a replacement roof and loss of rent.

28. The building of which the Property forms a part is at 19 Alta Vista Road and comprises 12 flats. Although it has been suggested by the Applicant that the Respondents have subdivided one flat, the Tribunal has taken no account of that since it has no relevance to these proceedings.

29. The Respondents own the leases of five flats and the freehold of the building which includes the two flats for which no leases have been granted. The other five flats have been sold to long leaseholders. One of the other leasehold owners, Mr Rowcroft failed to pay the service charges demanded in 2019 and 2020. Since the Respondents are liable to contribute 7/12 of the budget any delay or failure to pay their service charges prevents the Manager from dealing with maintenance or repairs to the building because it causes a significant shortfall in the service charge budget.

30. The Applicant told the Tribunal that the Respondents have consistently tried to interfere with the management of the Property. Mr Woodhead has sought several variations to the Management Order to ensure that he could recover service charges from the Respondents in relation to the two flats without leases. The specimen lease requires the freeholder to contribute the same share of service charges as a leaseholder, for any flats in respect of which a lease had not been granted. Mr Woodhead told the Tribunal that he was concerned that the Respondents would endeavour to evade payment for the two freehold flats and if successful, surrender the leases of their other five flats. It was for those reasons that he successfully applied for a variation of the current management order earlier this year.

31. He has enforced the County Court Orders he obtained against Mr Rowcroft, who did not defend the claims, but is still waiting for the sale of that leaseholder's cars to recover those service charge debts.

32. In the absence of the Respondents the Tribunal asked Mr Woodhead about the roof repairs and the failure of internal the communal lighting sensor at the property on which the Respondents blamed certain accidents. Whilst the Respondents did not submit a statement defending or answering the claim, they suggested that a delay in carrying out essential roof repairs by the Applicant caused them a significant loss of rental income.

33. Mr Woodhead stated that he relied upon local persons to change light bulbs but was unaware of any other reason for any lack of internal lighting. In his view it was adequate if bulbs were replaced.

34. Mr Woodhead said that he believed that all the flat roofing at the Property is reaching the end of its useful life. An unexpected defect in the drainage resulted in unforeseen repairs costing in the region of £8,000 earlier this year which depleted the service charge funds available to carry out other repairs. Service charges are demanded in January and July each year and the Respondents have habitually not paid the January service charge demand. He demanded service charges in July 2020 confirmed that the Respondents eventually made three payments totalling £9,000 between 3 August 2020 and 21 September 2020 but said that the last payment received prior to that was on 12 September 2019 [letter dated 19.11.20 page 119]. He had demanded £1,500 per flat in July 2020 so the Respondents' share was £10,500.

35. He said that each year he has issued a January demand and the Respondents have not paid. Payment is due within two weeks of the demand but he has been forced to repeatedly issue County Court proceedings. Thereafter the Respondents will counter claim and try and set off their alleged "expenses". He said that in 2019 he thought it more cost effective to try and agree a "deal" with them than proceed with the County Court claim. Under the terms of the Management Order, he is entitled to charge for his time in pursuing arrears of service charges but if he had charged for his time those leaseholders that **do pay** their service charges would effectively find that all their contributions had been spent on court fees and his costs in chasing the leaseholders who **do not pay**.

36. Following the unexpected costs of replacing the drainage pipes earlier in the year he was only able to carry on with the management by "borrowing" money from three leaseholders in advance of their being liable to pay the next service charge demand.

37. He said that there had not been any significant delay in dealing with the roof. He was not notified of any ongoing problems with the rooves over the Respondents' flats. He believes that the problem with the leaking roof to which the Respondents had referred repaired may have been caused by the removal of vegetation or debris. Until he received the Respondents' documents for inclusion in the bundle, he was unaware that the Respondents now claimed that the roof was damaged by debris. He told the Tribunal that as far as he is aware none of the roof issues identified by the Respondents are "insured risks" but the consequence of the age and fragility of the roof.

38. He has considered taking proceeding for forfeiture of one of the Respondents' leases and had contacted the mortgagees of the freehold. He discovered that, contrary to what the Respondents had told him, the flats could not be transferred to a third party without the consent of the lender and no consent had been given. Despite it being apparent to him that the 7 flats remain in the names of the Respondents as leaseholders or as freeholders he has received regular correspondence from Haleburn Limited claiming to be the current owner. He also received a letter dated 31 July 2019 from the Respondents' accountant which stated that the Respondents' seven flats at Sunhill had been transferred to Haleburn Limited on 7 October. No year was stated. His enquiries at the Land Registry revealed that in June 2020 the seven flats were still registered in the names of the Respondents. Despite this there he continued to receive emails from Haleburn demanding information but he was never provided with evidence of Haleburn's ownership, other than the letter dated 31 July 2019 from the Respondents accountant [Page 119].

39. In response to questions from the Tribunal he confirmed that the only loss of rent covered under the buildings insurance policy is ground rent. There is no obligation in the lease for the landlord to insure against loss of a leaseholder's rental income. It would be inappropriate given that the insurance is a joint expense shared between all the flats.

40. The Respondents have not disputed their liability to pay the service charge demanded by the Applicant. It appears that they have assumed that, by paying a sufficient amount to satisfy the January demand in August and September 8 – 9 months after the demand, those payments would be set against the January demand, satisfying it, and causing the Applicant to be obliged to restart his County Court Claim.

41. Mr Woodhead told the Tribunal that was why he had chosen to credit the payments received from the Respondents in August and September towards the July 2020 demand. The Tribunal noted his evidence that the failure of the Respondents to make any payments before 1 July 2020 resulted in his having to "borrow" money on account of the service charge payment due in July 2020 from other leaseholders to keep the service charge account in credit.

42. Although Mr Woodhead accepted that the Respondents have paid some amounts towards the July service charge demand they have not paid the whole of the sum demanded. [Page 30] which was £1,500 per flat.

43. The Tribunal accepted Mr Woodhead's submission that there was no logic in his setting off the £9,000 received from the Respondents after July 2020 against the January demands if it would have meant he would incur further costs issuing another County Court claim. He explained that hitherto he has not charged the leaseholders for his time but that substantial time has been expended by him in trying to recover unpaid service charges from both the Respondents and Mr Rowcroft.

44. Section 27A of the Landlord and Tenant Act 1985 enables the Tribunal to determine whether a service charge is payable. The Respondents have not disputed that the service charges demanded are payable.

45. The Tribunal may also determine the date on which the service charge is payable and the manner in which it is payable.

46. The bundle contains a copy of the Lease of Apartment 11 [page 37]. The Respondents have not suggested that any of the ten existing leases are drafted with different terms. That lease provides for the tenant to pay service charges on 1 January and 1 July in each year. It also contains a tenant covenant not to reduce any payment of rent by making any deduction from it or by setting any sum off against it [Clause 3 page 39].

47. The Tribunal accepts that notwithstanding the matters referred to in their defence to the County Court Claim the Respondents are not entitled to set any sums off against their service charge liability.

48. The Tribunal determines that the Respondents are liable to pay the £7,000 service charges which Mr Woodhead demanded in January 2020. Whilst it heard evidence from Mr Woodhead that the Respondents have made payments totalling £9,000 since 1 July 2020 it accepted that he had set these amounts against the Respondents' liability under the demand for service charged made on 1 July 2020. For that reason, the whole of the amount demanded and due on 1 January 2020 remains outstanding and the Respondents are liable to pay this sum to the Applicant.

County Court – issues and Decision

49. Judge C A Rai, sitting alone as a judge of the County Court exercising the discretion of a District Judge heard those matters that fall within the jurisdiction of the Court.

Claim including Interest

50. The Defendants did not attend the Hearing and had not given prior written notice to the Court that they would not attend the Hearing.

51. The Court decided the claim on the basis of the evidence of the Claimant alone in accordance with its power under CPR 23.11.

52. The FTT has determined that the Defendants are liable to pay the £7,000 claimed as service charges.

53. The Court ordered the Defendants to pay service charges of £7,000 in respect of their liability in January 2020 plus interest from 1 January 2020 to 8 March 2020 of £104.33 plus interest from 9 March 2020 until the date of the County Court Order.

Costs

54. The Claimant has sought to recover his court fee.

55. The Court proceeded to deal with costs under the principles set out in CPR 27.14. The claim was allocated to the Small Claims Track. The Court may order a party to pay to the other the fixed costs attributable to issuing a claim.

56. The Court orders the Defendants to pay the Claimant the court fee of £410.

Name: Judge C A Rai **Date: 29 December 2020**

Appeals
A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

The application must arrive at the First-tier Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the First-tier Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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 Judge who dealt with your case when the decision is handed down. 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.