



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)¹ &
IN THE COUNTY COURT at County
Court of Worthing, sitting at
Havant Justice Centre, Elmleigh
Road, Havant PO9 2AL**

Tribunal reference : **CHI/45UH/LSC/2020/0057**

Court claim number : **G2QZ25A0**

Property : **42 Rowlands Road, Worthing BN11
3JT**

Applicant/Claimant : **Chancery Lane Investments**

Representative : **Moreland Property Group Limited**

Respondent/Defendant : **Jessica Clare Estcourt**

Representative :

Type of Application : **Transferred Proceedings from
County Court in relation to
insurance (Service Charges) and
administration charges.**

Tribunal members : **Judge Tildesley OBE**

**Venue and Date of
Hearing** : **Havant Justice Centre
Telephone Conference
27 July 2020**

Date of decision Sent : **10 August 2020**

DECISION

Summary of the decisions made by the FTT

- (i) The Respondent is not liable to pay the costs of building insurance of £403.64 for 2017, administration charge of £450 (letter before action) and a direct debit indemnity claim of £50.

Summary of the decisions made by the County Court

- (i) The Defendant is not liable to pay ground rent of £50
- (ii) The Claim in the sum of £2148.25 is dismissed.
- (iii) The Defendant is not liable to pay the contractual legal costs.
- (iv) No order for costs.
- (v) Permission to Appeal against the no order for contractual costs refused

Background

1. The Applicant landlord issued proceedings issued against the Respondent on 16 March 2020 in the County Court Business Centre under claim number G2QZ25AO. The Respondent filed a Defence dated 18 March 2020. The proceedings were then transferred to the County Court at Worthing and then to this Tribunal by the order of District Judge Ellis dated 23 May 2020.
2. On 6 July 2020 the Tribunal directed that a Tribunal Judge sitting also as a Judge of the County Court would determine all issues arising from the Claim.
3. The Tribunal fixed a hearing on 27 July 2020 at 10.00am at Havant Justice Centre by means of telephone conference in view of the Coronavirus Pandemic.
4. The Applicant was directed to file by 20 July 2020

“A signed and dated statement with a statement of truth which responded to the Defence that it is not entitled to claim the sums due because 42 Rowlands Road (RTM) Co Limited assumed the right to manage the property with effect from 1 April 2016. **If the Applicant accepts the Defence** it must file a Notice of Discontinuance with Havant Justice Centre by **no later than 20 July 2020**.

If the Applicant does not accept the Defence it must state the grounds upon which it makes its claim in the signed and dated statement and provide the following documents **by 20 July 2020**:

- i. Office copy entries of freehold and leasehold titles.
- ii. A copy of the lease
- iii. A copy of demands and summary of tenant’s rights and obligations.

- iv. A breakdown of the charges claimed.
- v. A copy of the letter before action charge.
- vi. An explanation to justify the charge of £450 for a letter before action with a breakdown of the time spent and the category of the fee earner”.

5. The directions in respect of the Respondent’s case were as follows:

“The defence shall constitute the Respondent’s case together with a witness statement from Mark Sexton director of 42 Rowlands Road (RTM) Ltd setting out the date when the RTM Company assumed the right to manage and the responsibilities of the RTM company. The witness statement is to be sent by email to the Applicant and the Tribunal by **20 July 2020**.

If the Applicant does not accept the defence the Respondent will have a brief right of reply which must be provided to the Tribunal and to the Applicant by no later than **4pm on 24 July 2020**”.

6. The Applicant was also required to pay a hearing fee of £195.

7. The Applicant did not comply with the directions. The Respondent supplied a witness statement from Emily Chappell, Director of Rowlands Road LTM Company dated 13 July 2020, and a chronology of the Respondent’s dealings with the Applicant in respect of the property.

8. On 24 July 2020 the Respondent in accordance with the directions contacted the Tribunal stating that

“We have received this email from Moreland Estate Management but still no copy of the insurance or any other documents as directed in the court papers.

I understand I have a right to reply ending today so wanted this considered please.

I believe they are trying to frighten us into settling”.

9. The email was dated 21 July 2020 and signed by Mr Simon. The email was marked “Without Prejudice”.

10. The hearing was held in public at Havant Justice Centre on 27 July 2020. The Respondent attended the hearing on 27 July 2020 with her husband, Mr Angus Estcourt at 10.00am. There was no attendance from the Applicant at the appointed time. Judge Tildesley proceeded with the hearing. The Respondent mentioned that she had been contacted by Mr Simon on 21 July 2020 but had not received the documents as requested. Judge Tildesley explained that he did not wish to be informed of the contents of the “Without prejudice” correspondence. At this juncture at around 10.10 am Mr Simon for the Applicant joined the conference call. Mr Simon apologised for his late

attendance but no proper explanation was given. Judge Tildesley enquired about payment of the hearing fee and was told by Mr Simon that he had assumed the fee had been paid. Judge Tildesley accepted the word of Mr Simon.

The Evidence

The Issue & Decisions (FTT)

11. The Respondent together with her husband are the long leaseholders of the property under a lease dated 3 May 2013 for a term of 125 years and made between (1) Chancery Lane Investments Limited and (2) Mary Ann McGuckin.
12. On 1 April 2016 Rowlands Road RTM Company Limited acquired the right to manage 42 Rowlands Road. From that date the management functions of the Applicant in relation to the property ceased and instead became the responsibility of the RTM company. In short from 1 April 2016 Rowlands Road RTM Company is the Respondent's landlord for the collection of service charges and insurance. The Applicant has no legal standing to demand service charges including insurance from 1 April 2016 from the Respondent in respect of the property.
13. Mr Simon outlined the details of the Claim. He said that the Claimant was not pursuing the direct debit reversal of £800.48 (April to September 2016) except for ground rent of £50 which Judge Tildesley would consider when sitting as a County Court Judge. According to Mr Simon, this left for the consideration of the Tribunal the sums of £403.64 for building insurance for 2017, £50 for a direct debit indemnity claim and £450 for an arrears letter which Judge Tildesley assumed to be an administration charge.
14. Judge Tildesley enquired about the evidence upon which the Applicant was relying. Mr Simon stated it was the "Particulars of Claim" as set out at the top right-hand corner of the Claim Form. Judge Tildesley asked about the Applicant's legal right to recover service and administration charges from 1 April 2016. Mr Simon referred to section 96(2) of the Commonhold and Leasehold Reform Act 2002 and the existence of some form of agreement with the RTM company which Mr Simon said entitled the Applicant to recover service charges including insurance from the Respondent after 2016. Judge Tildesley pointed out the witness statement of Emily Chappell, Director of the RTM Company, which said that from 1 April 2016 the RTM Company took over the management of the building including arranging the insurance for the building. Judge Tildesley observes there was no mention of an agreement between the RTM company and the Applicant permitting the Applicant to recover the costs of insurance from the leaseholders. Judge Tildesley asked Mr Simon to point to the agreement in the

evidence submitted for the hearing. Mr Simon could not as the Claimant's evidence consisted solely of the "Particulars of Claim".

15. Judge Tildesley then asked Mr Simon whether the Applicant had evidence before the Tribunal to substantiate the amounts demanded by way of service charges and administration charges. Mr Simon agreed that the Applicant had no evidence before the Tribunal. Mr Simon then requested the Tribunal to grant an adjournment on the ground that he had been poorly and had been unable to attend to the case. In response to a question from Judge Tildesley Mr Simon agreed that he had been in contact with the Respondent on 21 July 2020.
16. The Respondent objected strongly to the adjournment and pointed out that since April 2016 that she had received from the Applicant a number of demands for amounts owing which kept changing for no apparent reason. Further Respondent had made requests for information which the Applicant had ignored. Finally, the Respondent said that the Applicant had proceeded with legal action despite the Respondent having paid the ground rent due.
17. Judge Tildesley refused the adjournment (1) the legal basis for the Claim is highly dubious. (2) the Applicant did not comply with the directions. (3) The Applicant did not contact the Tribunal before the hearing to explain that it was unable to comply with the directions. (4) Mr Simon was fit enough to contact the Respondent on 21 July 2020 so there is no reason why he could not have made contact with the Tribunal (5) The hearing date of 27 July 2020 was one of the available dates given by the Applicant (6) The Applicant has consistently ignored requests for information from the Respondent and the RTM Company (7) The Claims are exaggerated: the sum on the claim form is (£2,148.25 compared to £1,704.12 in the particulars); an amount of £450 for a letter before action is beyond the bounds of reasonableness. (8) The Applicant's actions in ignoring the Respondent's requests for information and the Tribunal directions are deliberate.
18. On resumption of the hearing Mr Simon was unable to provide evidence to substantiate that the Applicant had authority to recover the insurance charge, the administration charge of £450 and the direct debit indemnity from the Respondent.
19. **The Tribunal determines that the Respondent is not liable to pay building insurance of £403.64 for 2017, administration charge of £450 (letter before action) and a direct debit indemnity claim of £50.**

The Issues & Decisions (County Court)

Ground rent

20. Judge Tildesley after concluding the matters that fell within the Tribunal's jurisdiction sat alone as a judge of the County Court exercising the jurisdiction of a district judge.
21. The Claimant was unable to produce a demand for the ground rent of £50 claimed. Judge Tildesley found that there was no evidence that the ground rent had been properly demanded. Judge Tildesley ordered that the ground rent was not payable by the Defendant.

Costs

22. Mr Simon on behalf of the Claimant applied for contractual legal costs. Mr Simon accepted that the Applicant's evidence did not include the legal authority for making such a claim. The Applicant's evidence included no schedule of costs.
23. Judge Tildesley dismissed the claim for contractual costs because the Claimant had adduced no evidence to substantiate its claim in law. Judge Tildesley also noted that the Claimant had been wholly unsuccessful with its Claim and that it was totally without merit.
24. The Respondent indicated that she was not seeking an order for costs.

Decision

25. Judge Tildesley OBE dismisses the Claim in the sum of £2,148 and makes no order in respect of contractual costs and court fees.
26. A separate County Court order, reflecting this decision is attached.

Permission to Appeal

27. Mr Simon on behalf of the Claimant applied for permission to Appeal the decision in respect of contractual legal costs on the ground that Judge Tildesley was not entitled to refuse to make an order because the Claim had been wholly successful.
28. Judge Tildesley refused permission to Appeal. Judge Tildesley repeated that the Claimant had failed to establish its legal entitlement to the contractual costs and that a Claim for contractual costs is still subject to Court's discretion to order. In Judge Tildesley's view, it would be unconscionable to award the Claimant its contractual costs for making a Claim that was totally without merit.

Rghts 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 by email to rpsouthern@justice.gov.uk 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.