

General Form of Judgment or Order

In the County Court at Uxbridge sitting at 10 Alfred Place, London WC1E 7L R	
Claim Number	F2QZ954H
Date	17 November 2020

Lynne Simpson	1st Claimant
Heritage (Breakspear) Ltd	1st Defendant

BEFORE Tribunal Judge Brilliant, sitting as a Judge of the County Court (District Judge), with Mr Stephen Mason BSc FRICS as assessor

UPON:

- (a) The County Court having transferred to the First-tier Tribunal the above matter and
- (b) The Tribunal Judge (sitting as a Judge of the County Court) having exercised County Court jurisdiction on the case transferred to the Tribunal and
- (c) It being allocated to the small claim track

AND UPON hearing the Claimant and in person and Mr Rainford on behalf of the Defendant

IT IS ORDERED THAT:

1. The Court orders the Defendant to repay the Claimant the sum of £2,152.79 within 14 days.
2. The Court dismisses the claim to an award of statutory interest on the above sum.
3. The Court dismisses the Claimant's claims for (a) damages for distress and anxiety, (b) damages for harassment, (c) damages for deterioration of the estate and (d) damages in respect of future remedial costs of the estate.
4. The Court orders the Defendant to pay to the Claimant Court and

Hearing fees of £610.00 within 14 days.

5. The Court orders the Defendant to pay the Claimant costs of £574.50 within 14 days.
6. The decision will be formally made on and take effect from 2 December 2020 (the "Hand Down Date"). In other words, the 14 days for payment of the above sums commences on 2 December 2020. There is no need for any party to attend the Tribunal offices on that day.
7. Any application for permission to appeal must arrive at the Tribunal office before the Hand Down Date. The permission to appeal must set out the grounds of appeal and the result the party making the appeal is seeking.
8. If application for permission to appeal is made and is refused, or if no application for permission to appeal is made, but in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the Tribunal office) within 21 days of the Hand Down Date.

DECISION

1. The Claimant commenced these proceedings in the County Court Business Centre under Claim No E61YX980 on 07 February 2019. The Claim Form referred to a claim for repayment of service charges made by the Claimant to the Defendant over the last six years. This was on the basis that (a) the services had not been delivered, (b) there was no evidence supporting the charges, or (c) payments had been made which should have been paid by other people. The relevant years were from 2013/2014 until 2018/2019.
2. The Defendant served a Defence dated 14 March 2019.
3. The Claim Form said that separate detailed particulars would be filed within 14 days. Instead, the Claimant provided a 28 page document which according to the index to the bundles is dated October 2019. Pages 14 – 18 gave further details of what was said to be the overpayment in each of relevant six years.
4. On 13 April 2019, the case was transferred to the County Court at Uxbridge.
5. On 26 June 2019, the case was transferred to the First-tier Tribunal, having been assigned to the small claims track.
6. The Claimant and her partner, Mr Sherwood, are the freehold owners of a detached house now known as Tarleton Lodge ("the Lodge").

7. This case is concerned with service charges payable by the Claimant¹ as freeholder of the Lodge towards the developer's costs of running the estate on which the Lodge and a number of other dwellings are situated. These costs include matters such as the provision of utilities and the maintenance of the grounds.
8. The Claimant and Mr Sherwood purchased the Lodge for £760,000 on 10 May 2013 from Burren Investments Ltd ("Burren"). The land is registered and the transfer was effected by Land Registry form TR1 in the usual way ("the Transfer").
9. The obligations of the Claimant and Mr Sherwood to pay estate service charges are set out under the heading "Other covenants by the Transferee" in the Transfer. In the event, it is not necessary to set out these in detail. It suffices to say that the Claimant and Mr Sherwood are under an obligation to pay for certain services, and the percentage of the total costs to be paid vary from service to service.
10. The parties to the Transfer are solely (1) the Claimant and Mr Sherwood as purchasers and (2) Burren a vendor. The Defendant is not a party to the Transfer. Nevertheless, at all times the service charges have been demanded by and paid to the Defendant. Correctly, no point has been taken on this², and neither party invited me to join Burren to these proceedings
11. It should be said by way of background that the percentages in the Transfer are lower in most cases than the Defendant says they should be. But in the absence of any claim for rectification (and there is no evidence in these proceedings that such a claim would succeed) the Defendant is stuck with the poor bargain it made.
12. At pages 514 and 515 of the bundle, the Claimant set out very clearly the amount of the claim she is now pursuing.
13. Firstly, she sets out the amount of service charges she is claiming back over the six years. This now totals £2,152.79.
14. Secondly, she claims statutory interest at 8% per annum on these sums, amounting to £1,063.45.
15. Thirdly, she claim £700.00 damages for the distress and anxiety which she says has been caused by the behaviour of the Defendant over the last six years.

¹ No point is taken that Mr Sherwood is not a party to these proceedings.

² As the parties for the last six years have conducted themselves on the basis that the Defendant is entitled to demand the service charges, an estoppel by convention arises and the Claimant could not take any point on this.

16. Fourthly, she claims £700.00 damages for the repeated harassment she says she has incurred as a result of the behaviour of the Defendant over the last six years.
17. Fifthly, she claims £750.00 damages for the extensive deterioration of the estate.
18. Sixthly, she claims £1,500.00 as an allowance for future remedial costs to be incurred in bringing the grounds back to the state in which they would have been if they had been properly maintained.
19. An important point I must make is that because the Claimant is paying service charges as a freeholder and not as a long leaseholder, she does not have the protection of the Landlord and Tenant Act 1985. She does not have a statutory right to challenge service charges which she has already paid.
20. Instead, she has to depend on the common law of contract and on the area of law known as restitution, which is of no little difficulty.
21. The Tribunal has no jurisdiction to hear these proceedings. It is for this reason that I am sitting as a District Judge of the County Court and not as a Tribunal Judge. Similarly, Mr Mason is sitting as my assessor, and not as a professional member of the Tribunal.
22. It might be said against the Claimant that if she thought it was more likely than not that she was *not* liable to pay, but paid nonetheless, she should not be considered to be mistaken or entitled to make the claim for repayment. See *Flaux J in Marine Trade SA v Pioneer Freight Futures Co Ltd [2009] EWHC 2656 (Comm), [2010] 1 Lloyd's Rep. 631*.
23. However, as this point was not taken by the Defendant it would be wrong for the Court to take it of its own motion.
24. As it was, Mr Rainford sensibly took a pragmatic view and during the hearing offered to repay the Claimant the £2,152.79 she asked for. He also offered to pay the expenses (costs) of £574.00. He did not offer to pay any of the other five heads of claim set out in paragraphs 13 – 17 above or the Court fees.
25. In these circumstances, there was no longer any need for the Court to investigate how much, if anything, should be repaid. Instead the Court turned to the five outstanding matters.
26. In my judgment, this is not a case in which I should exercise my discretion under s.69(1) County Courts Act 1984 to award interest on the amount to be repaid. This is because it is not a debt, it is the repayment of sums the Claimant voluntarily chose to pay, even though she was disputing them at the time.
27. The claims for damages for distress, anxiety and harassment arising from

a service charge dispute or breach of contractual obligations by a freehold developer are not known to the law, and are dismissed.

28. In any event, I would not entertain these claims because they did not form part of the original Particulars of Claim, but were added in paragraphs 21 and 26 of a much later document dated 21 March 2020. This is a County Court case governed by the Civil Procedure Rules 1999. A party cannot just add a new claim during the course of proceedings without obtaining permission to amend her case.
29. As far as the claims for damages, past and future, arising from breaches of the developer's obligation to maintain the estate are concerned, such claims are known to the law. However, these claims similarly arrived very late in the day, without permission having been given to amend the Particulars of Claim. Moreover, these figures, which appear in paragraphs 78 and 79 of the Claimant's document dated 21 March 2020, are not broken down or explained in any way and would seem to be plucked out of the air.

Judge: *Simon Brilliant*

Simon Brilliant