



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference: BIR/00CS/LSC/2018/0013;
BIR/00CS/LLC/2021/0006 &
Claim Number E8QZoF46

Property: 12 Oak Close, Gospel Oak, Tipton, DY4 0AY

Applicants: David, Paula, Alan & Steven Matthey

Representative: Mark Phillips, Blue Property Management UK Limited

Respondent: Raymond Holloway

Representative: Mr. S. J. Bradshaw, Direct Access Counsel.

Type of Application: Service charges on transfer from the County Court at Bournemouth & Poole (Claim no.: E8QZOF46); and an application that the Applicant is prevented from recovering its costs pursuant to s20C of the Act of 1985.

Date & Venue of Hearing: Remotely on 14 June 2021

Date of decision: 22 July 2021

Tribunal Members: Judge A McNamara
Mr R P Cammidge FRICS

DECISION/JUDGMENT

Introduction

1. The Applicants bring this claim for unpaid service and administration charges and interest in the sum of £3918.33.
2. The claim was originally issued in the County Court under claim number E8QZoF46.
3. On 19 July 2018 the case was transferred from the County Court to this Tribunal.
4. Upon transfer, since this case was one of a number relating to the Oak Close development, it was stayed pending the outcome of the linked case of 14 Oak Close (BIR/00CS/LIS/2018/0011).
5. On 31 July 2018, Regional Judge Jackson directed that that case should be the 'lead case' pursuant to Regulation 23(2) Tribunal Procedure, etc Rules 2013.
6. The 14 Oak Close case was resolved by the Tribunal's decision dated 14 February 2020; and the review decision dated 17 June 2020, the latter essentially dealing with the reasonableness of charges and rectification of arithmetical matters.
7. On 13 January 2021, the Upper Tribunal dismissed the Applicants' appeal in relation to the review decision.
8. In the interests of proportionality, the reasoning from the decisions of 14 February and 17 June 2020 is adopted in relation to the issues as to the legitimacy of the service charge demands and the reasonableness of the sums sought. This decision should be read in accordance with those previous decisions.
9. In the light of the Tribunal's previous decisions in relation to 14 Oak Close; and the Applicant's decision not to challenge the Respondent's s20C Landlord & Tenant Act 1985 Application, the only remaining issues in the current case relate to interest claimed upon unpaid service charges; and administration charges.

10. On 1 March 2021, Regional Judge Jackson issued directions in this case which are unaffected by his subsequent directions on 3 March 2021.
11. In the recital to the 1 March 2021 directions the Regional Judge set out that this case would be resolved by a Tribunal Judge sitting as a District Judge of the County Court under section 5(2)(t) and (u) County Court Act 1984 as amended by Schedule 9 Crime and Courts Act 2013 and accompanied by a Valuer Member of the Tribunal as an Assessor. He also directed that the case be allocated to the small claims track.

The lease

12. The pertinent provisions of the lease, namely Clause 1(i) and Part II (*COVENANTS BY LESSEE WITH LESSOR*), Paragraph 11 are not controversial and are known to the parties. The Tribunal/Court adopts those provisions into this decision/judgment.
13. The only caveat to the above lack of controversy is in paragraph 5 of the Respondent's statement of case in which it was submitted that the lease should be looked at through the prism of the decisions of the Tribunal as to the interpretation of the lease and the reasonableness of service charges.
14. In turn, that submission was not challenged at the hearing on 14 June 2021.
15. Accordingly, this decision flows from the decisions in principle in the lead case and the lease.

The Applicant's case

16. The Applicants contend that they are entitled to £3918.33 by way of interest upon unpaid service charges and administration charges for the period 2012 to 2017.

17. They pray in aid Clause 1 (i) and Part II, paragraph 11 of the lease and suggest that they are, respectively, entitled to interest; and administration charges since they had contemplated forfeiture of the lease for default.
18. Furthermore, the Applicants also contend that they were forced to commence the proceedings in the County Court in order to recover those unpaid sums and both contractual and statutory interest.

The Respondent's case

19. Without taking issue with the lease it is the Respondent's case that in the light of the Tribunal's decisions in the lead case of BIR/00CS/LIS/2018/0011 the sums sought upon which interest was calculated should be reduced by £2,254.92 from £2411.14, leaving a balance of £156.22 as at January 2018.
20. The Tribunal adopts the table set out under paragraph 10 of the Respondent's case in relation to service charges as follows:

Year	Service charge	Additional	Total	Tribunal decision	Reduction
2012	700.00	770.75	1,470.75	837.58	633.17
2013	742.00	323.75	1,065.75	812.82	246.18
2014	812.00	174.29	986.29	657.07	329.22
2015	916.00	238.46	1,154.46	846.99	307.47
2016	1,036.00	199.63	1,235.63	937.19	298.44
2017	1,046.00	18.08	1,064.08	623.84	440.44
Total	5,252.00	1,724.96	6,976.96	4,715.49	2,254.92

21. To the Respondent's credit he has since paid a further £497.50 resulting in an overpayment of £341.28.

22. The Applicant did not challenge the Respondent's arithmetic at the hearing on 14 June 2021, so this decision is made on the basis that the table above and the extent of the overpayment are agreed. Accordingly, no service charges are due.
23. As the Respondent pointed out at paragraph 16 of the statement of case and demonstrated in the table at Annex A of the statement of case, that leaves the potential maximum value of outstanding interest at £169.10. That is if one assumes a rate of 15%.
24. It is also submitted that had the sums sought by the Applicant followed the reasonable figures imposed by the Tribunal, the likelihood is that the Respondent would only have had moderate and transient arrears. The Tribunal agrees.
25. In relation to the forfeiture point, the Respondent disagrees that the actions taken by the Applicants were for the purposes of or incidental to the preparation of a notice under s.146 Law of Property Act 1925. In particular, the Respondent repeats the submission that, had appropriate and reasonable demands been levied, the respondent's arrears would have been moderate, short lived and insufficient to contemplate forfeiture on the part of the Applicant.

Reasoning

26. It is uncontroversial that the lease entitles the Applicant to be paid service and administration charges, and interest.
27. It is also the case that, in the lead case, the Tribunal was only just persuaded that the Applicant had served effective demands; and that the sums sought were unreasonable.
28. As a matter of construction, the Respondent fairly concedes that there were periods of arrears, even when one applies the Tribunal's reasoning as to what was reasonable.

29. In the light of the Respondent's history of payments, it is also right to reflect that, had the Applicant presented reasonable demands, the sums involved and the periods for which they were outstanding would have been most unlikely to trigger proceedings such as these.
30. Although one must be wary of the prism of hindsight, the just solution is that, the Applicant's claim succeeds in relation to the claim for contractual interest but subject to the recalculation suggested by the Respondent and what follows.
31. In other words, it is conceded by the Respondent that there would have been times when sums would have been unpaid even if the Tribunal's figures are adopted. Therefore, as a matter of construction, although there are currently no arrears of service charge, interest would have accumulated from time to time.
32. The Court is not persuaded that the actions of the Applicant were preparatory to the service of a notice pursuant to s.146 LPA. At all stages the Respondent made clear that he wanted an explanation in relation to those matters he considered to be unreasonable or not explained.
33. Ultimately the Respondent was vindicated since the Tribunal made substantial reductions to the service charges sought in the lead case.
34. Therefore, the Court is persuaded that the sums as found by the Tribunal in paragraph 20 above would be unlikely to prompt a s.146 notice and/or forfeiture proceedings.
35. Accordingly, the claim for administration charges is dismissed.

Conclusion

36. Given that it is more than likely that the Respondent would only ever have been in short lived moderate arrears (and only to the extent of the recalculated sums

in paragraph 20 above), the Court finds that the amount of contractual interest would have been nominal over the period 2014-2018. Accordingly, the Court finds that the appropriate sum by way of contractual interest is £85.00.

37. Statutory interest pursuant to section 69 County Courts Act 1984 is at the absolute discretion of the Court.
38. In the light of the reasoning above, the Court awards no statutory interest and considers that the appropriate Order for costs is no Order.
39. For the avoidance of doubt the decision in relation to statutory interest and costs is an order of the Tribunal Judge sitting alone.
40. Accordingly, there shall be:
 - a. Judgment for the Applicant in the sum of £85.00; and
 - b. No order for costs.

Appeal Rights

Appealing against the decision of the Tribunal

41. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
42. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
43. 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.

44. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
45. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the decision of the County Court

46. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
47. The date that the judgment is sent to the parties is the hand-down date.
48. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
49. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
50. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
51. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court office within 14 days after the date the refusal of permission decision is sent to the parties.
52. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

53. In this case, both of the above routes should be followed.

Judge A. McNamara

Mr. P. Cammidge FRICS.