



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

**IN THE COUNTY COURT at Bromley,  
sitting at 10 Alfred Place, London WC1E  
7LR**

**Case reference** : **LON/00AF/LSC/2019/0475**

**Court Claim No.** : **F52YJ849**

**HMCTS code** : **V: CVPREMOTE**

**Property** : **20 Hampton Grange, 14 Mariam  
Gardens, Bromley, Kent BR1 3FH**

**Applicant** : **Hampton Grange (Bromley)  
Management Company Limited**

**Representative** : **SLC Solicitors**

**Respondents** : **(1) Ms P Rocha  
(2) Mr J Churchfield**

**Representative** : **In person**

**Type of application** : **Liability to pay service charges and/or  
administration charges**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr M Cairns MCIEH**

**Date of decision** : **10 May 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing, which has been consented to/not objected to by the parties. The form of remote hearing was V: CVPREMOTE. 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 are in a bundle of 1194 pages, the contents of which we have noted. The order made is described at the end of these reasons.

## **Order of the Tribunal**

- (1) The Respondents' Defence and/or statement of case is struck out.
- (2) Judgement for the Applicant in the sum of £3,478.19, being the total service charge arrears for the years ended 31 July 2018 and 2019 respectively together with contractual interest thereon in the sum of £378.57. The total sum of £3,856.76 is payable by 7 June 2021.
- (3) The claim for late payment charges is dismissed.
- (4) The Respondents do pay the Applicant's costs of the proceedings to be subject to a summary assessment if not agreed.
- (5) By 4pm on **17 May 2021** the Applicant shall serve the Schedule of Costs on the Respondents filed in respect of the hearing.
- (6) By 4pm on **1 June 2021** the Respondents shall send to the Tribunal and the Applicant's solicitors Points of Dispute setting out what items of cost are disputed and why.
- (7) By 4pm on **8 June 2021** the Applicant shall file and serve a brief reply, if so advised.
- (8) Unless the Applicant's costs are agreed, the Tribunal shall carry out a summary assessment of the Applicant's costs by way of a paper determination on the next available date after **8 June 2021**.

## **The application**

1. This is the Applicant's application dated 30 April 2021 to strike out to the Respondents' purported witness statements and their case pursuant to Regulation 9(3)(a), (b), (d) and (e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2103 ("the Tribunal Rules"), which provides:

"(3) The Tribunal may strike out the whole or part of the proceedings or case if –

- (a) the (party) has failed to comply with a direction which stated that failure by the (party) to comply with the direction could lead to the striking out of the proceedings or case or that part of it;
  - (b) the (party) has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
  - (c) ...
  - (d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
  - (e) the Tribunal considers there is no reasonable prospect of the (party's) proceedings or case, or part of it, succeeding.”
2. The basis on which the application is made is that the Respondents have failed to serve witness statements of fact in accordance with paragraph 7 of the Tribunal's Directions dated 30 January 2020.
  3. This case has been transferred from the County Court to determine the Respondents' liability to pay and or the reasonableness of service and/or administration charges for the years ended 31 July 2018 and 2019 respectively. The case is what is now commonly known as a 'Deployment Case". This means that the Tribunal is exercising both the County Court and Tribunal jurisdictions. Therefore, the Civil Procedure Rules and the Tribunal Rules apply.
  4. The parallel jurisdiction to strike out a statement of case in the County Court can be made under CRP 3.4(2)(a) and (c), which provides:
    - “ The Court may strike out a statement of case if it appears to the Court-
    - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
    - (b) ...
    - (c) that there has been a failure to comply with a rule, practice direction or court order.”

### **The hearing**

5. The hearing took place on 10 May 2021. The Applicant was represented by Mr Chipato of Counsel and the Respondents appeared in person.

6. This decision is given orally to the parties on the day following the Tribunal hearing submissions from both sides. It was made following some deliberation by the Tribunal given the draconian outcome for the Respondents.
7. Today is the final hearing, which has been listed with a time estimate of 1 day. The Tribunal is presented with two hearing bundles comprised of 1194 pages of evidence in total to decide a claim for the sum of £4,439.24.
8. Having been taken through the directions order by the Tribunal, Mr Churchfield, on behalf of the Respondents accepted that they had not served witness statements of fact in accordance with paragraph 7 of the directions order. What had in fact been served were a number of various documents that purported to be witness statements, which do not properly address the issues in this case and do not, in any event, contain a statement of truth. Moreover, none of the witnesses appear today to give oral evidence and for their evidence to be tested in cross-examination. The Respondents are, therefore, unable to rely on any witness of fact evidence in support of the challenges made to the service and/or administration charges.
9. Furthermore, Mr Churchfield also accepted that the Respondents had not served a statement of case pursuant to paragraph 4 of the directions order. The only document served was the Scott Schedule completed by them, which does no more than put the Applicant to proof for each and every item of expenditure for the two years in question. Absent a statement of case, neither the Tribunal nor the Applicant fully understands what the Respondents' case is. The photographic evidence on its own provides no clarification, as there is no explanation behind them. It is not appropriate for the Respondents on the day of the hearing to give ad hoc evidence, especially given the number of items of cost being challenged.
10. The only explanation offered by the Respondents for these material omissions is that they did not understand from the directions order what it is they were required to do. In the Tribunal's judgement, the directions order is not a complex document and is both clear and understandable. It was drawn up following consultation with the parties at an oral case management hearing on 30 January 2020.
11. Whilst we fully understand that the Respondents are lay persons and have no legal qualification, nevertheless, the same explanation offered by them for their procedural non-compliance was rejected by the Supreme Court in the case of *Barton v Wright Hassall LLP* [2018] UKSC 12.
12. The Respondents' case in effect rests on what is stated in the Scott Schedule and, as stated earlier, it simply puts the Applicant to proof. There is no coherent body of evidence on which they can rely in support of their case.

13. Accordingly, the Tribunal is satisfied that the Respondents' Defence and/or statement of case is struck out pursuant to Regulation 9(3)(a) and CPR 3.4(2)(c) for the procedural non-compliance. Indeed, the Tribunal directions order contained an express term warning the parties' about the potential consequences of not complying with them.
14. In the alternative, it is struck out under Regulation 9(2)(e) and CPR 3.4(2)(a) on the basis that the Respondents have no real prospect of successfully defending the claim. The Tribunal is satisfied that Respondents' evidence as it stands is simply a bare denial and does not contain a coherent statement of facts and/or the facts amount to a valid defence to the claim.
15. Accordingly, the Applicant is awarded judgement on the claim. The Tribunal's order appears at the beginning of this decision.

**Name:** Tribunal Judge I Mohabir      **Date:** 10 May 2021

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then 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).

**General Form of Judgment or Order**

<b>In the County Court at</b>	
<b>Bromley sitting at 10 Alfred Place, London WC1E 7LR</b>	
<b>Claim Number</b>	<b>F52YJ849</b>
<b>Date</b>	10 May 2021

<b>Hampton Grange (Bromley) Management Company Limited</b>	<b>Claimant</b>
<b>(1) Ms P Rocha (2) Mr J Churchfield</b>	<b>Defendants</b>

**BEFORE Tribunal Judge Mohabir, sitting as a Judge of the County Court (District Judge) with Mr Cairns as an Assessor**

UPON the claim having been transferred to the First-tier Tribunal for determination by the County Court at Bromley

AND UPON this order putting into effect the decision of the First-tier Tribunal made on 10 May 2021

**IT IS ORDERED THAT:**

1. The Respondents' Defence and/or statement of case is struck out.
2. Judgement for the Applicant in the sum of £3,478.19, being the total service charge arrears for the years ended 31 July 2018 and 2019 respectively together with contractual interest thereon in the sum of £378.57. The total sum of £3,856.76 is payable by 7 June 2021.
3. The claim for late payment charges is dismissed.
4. The Respondents do pay the Applicant's costs of the proceedings to be subject to a summary assessment if not agreed.
5. By 4pm on **17 May 2021** the Applicant shall serve the Schedule of Costs on the Respondents filed in respect of the hearing.
6. By 4pm on **1 June 2021** the Respondents shall send to the Tribunal and the Applicant's solicitors Points of Dispute setting out what items of cost are disputed and why.

7. By 4pm on **8 June 2021** the Applicant shall file and serve a brief reply, if so advised.
8. Unless the Applicant's costs are agreed, the Tribunal shall carry out a summary assessment of the Applicant's costs by way of a paper determination on the next available date after **8 June 2021**.
9. The reasons for the making of this Order are set out in the combined decision of the Court and the First-tier Tribunal (Property Chamber) dated 10 May 2021 under case reference LON/00AF/LSC/2019/0475.

Dated: 10 May 2021