



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY) &  
IN THE COUNTY COURT AT  
CENTRAL LONDON SITTING AT 10  
ALFRED PLACE, LONDON WC1E 7LR**

**Tribunal Reference** : LON/00BK/LSC/2020/0375  
LON/00BK/LSC/2021/0023

**Court Claim No** : G84YX791

**HMCTS Code** : CVP Remote

**Property** : Flat 25 Dudley Court, Upper Berkeley Street,  
London W1H 5QA

**Applicant Claimant** : Intercontinental Developments Limited

**Representative** : Mr Joel Semakula of Counsel, instructed by  
Bishop & Sewell LLP

**Respondent** : Antonio Maria Franzini

**Representative** : Miss Sherry Fard of Lewis Nedas Law

**Type of Application** :

**Tribunal Members** : Tribunal Judge Dutton  
Mrs A Flynn MA MRICS

**In the County Court** : Tribunal Judge Dutton  
Mrs A Flynn MA MRICS as Assessor

**Date of Hearing** : 7<sup>th</sup> June 2021

**Date of Decision** : 9 July 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 by the parties. The form of remote hearing was CVP Video. A face-to-face hearing was not held because it was not practicable, and no-one requested same and further that issues could be determined in a remote hearing.

The documents that we will refer to were in a bundle of some 950 pages and additional papers comprising witness statements from Ms Rebecca Walton and from Mr Franzini which have been noted by us during the course of the hearing. The order is as described at the end of these reasons.

### **DECISION**

This decision takes effect and is “handed down” from the date it is sent to the parties by the Tribunal office:

Summary of this decision is made by the Tribunal:

1. The following sums are payable by the Respondent to the Applicant by 16 August 2021
  - (i) service charges for the service charge year October 2018 to September 2019 as set out at page 91 of the bundle in the sum of £4,556.60 to include ground rent of £600
  - (ii) for the period October 2019 to September 2020 the sum of £3,937.44.

Summary of decisions made by the Court:

2. The parties will be invited at the conclusion of this decision to refer to any cost issues and interest that may due.

### **PROCEEDINGS**

3. Proceedings were originally issued against the Respondent in the County Court Money Claims Centre on 7<sup>th</sup> July 2020. The Claim Number allocated was G84YX7491. The matter was subsequently transferred to the County Court at Central London where an order was made by Deputy District Judge Redpath Stevens on 24<sup>th</sup> November 2020 transferring the claim to the First Tier (Property) Tribunal “for a determination of the service charges due from the Defendant to the Claimant (if any) for the period 7<sup>th</sup> September 2018 to 3<sup>rd</sup> September 2019.”
4. Subsequently on 28<sup>th</sup> January 2021 this Tribunal issued directions confirming that the claim related to service charges of £4,659.48, an administration charge of £205 and interest then calculated to the sum of £102.88 with a continuing daily rate of 26p.
5. The directions also provided that agreement had been reached between the parties that this Tribunal should deal with the issues of payability and reasonableness in respect of the service charges in the year 2019/20. Mr Franzini

was instructed to make an application for that period and if he did so that claim would be consolidated with the matter under reference LSC/2020/0375.

6. On 3<sup>rd</sup> February 2021 an application was lodged on behalf of Mr Franzini but it sought to recover the service charge years 2020-21 and 2021-22. This is not in accordance with the directions made by the Tribunal on 28<sup>th</sup> January 2021 but has been accepted by the Applicant as being an intention to challenge the service charge year 2019/20. These proceedings do not deal with the subsequent years included in Mr Franzini's application. If he wishes to proceed with those two years, then he will need to contact the Tribunal but in the meantime his claim remains stayed. That can however be lifted if Mr Franzini wishes to proceed, and directions will then be issued.
7. Further directions in connection with cost and interest will be included at the conclusion of this decision which relates solely to First Tier Tribunal matters under section 27A of the Landlord and Tenant Act 1985.

### **HEARING**

8. The Applicant freeholder Intercontinental Developments Limited were represented by Mr Joel Semakula of Counsel instructed by Bishop and Sewell Solicitors. The Respondent leaseholder was represented by Miss Sherry Fard of Lewis Nedas Law Solicitors.

### **BACKGROUND**

9. The subject property is a second floor flat known as Flat 25 Dudley Court, Upper Berkeley Street, London W1H 5QA (the Flat). There are flats numbered to 106, although it would appear there is no flat 13. As a matter of comment the address shown in the lease is Edgware Road. The lease is between Gillmore Properties Limited of the first part and a Mr Ahmed Alvi of the second part. The lease is an under lease for a term of 80 years less five days from 29<sup>th</sup> September 1979. It contains obligations on the part of the Landlord to provide services and for the tenant to pay 0.68% of those costs. In so far as necessary we will refer to the relevant clauses of the lease during the course of this decision.
10. It was not possible to inspect the Property because of the present Covid restrictions.

### **DOCUMENTATION**

11. We were provided with a bundle of documents running to some 950 pages and in addition witness statements from Rebecca Walton of HML, the property managers and from Mr Franzini. Miss Walton did not attend the hearing and instead we heard from Mrs Foster who adopted Miss Walton's witness statement as her own evidence. This follows an application by Mr Semakula for Mrs Kim Foster to give such evidence relying on Rules 3 and 6 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. Although Miss Fard was concerned at this change it was not a matter that she pursued.
12. The bundle before us contained documentation emanating from the County Court, this Tribunal's directions, a schedule prepared by the Respondent and reviewed by the Applicants, a number of accounting documents, the lease and

other general documentation which we will refer to as necessary during the course of this decision.

## **ISSUES**

13. The matters complained of by Mr Franzini for the two years related to the following: lift repairs; boiler maintenance; general repairs; electrical repairs; plumbing repairs; pest control; cleaning; electricity; utilities; porters; rent payable; management fees; professional fees; fire prevention works and other major works. However, in the skeleton argument produced by Miss Fard on behalf of Mr Franzini we were told that the disputes were narrowed to the following points:
  - a. cleaning and general cleanliness of the communal areas
  - b. poor communal flooring
  - c. internal decoration of the communal areas
  - d. internal repair and maintenance to the communal areas
  - e. poor lighting in the communal areas
  - f. lifts
  - g. the reasonableness of costs in comparison to the quality of services provided.
14. We decided that Mr Franzini should give his evidence first and he had made a witness statement, which was dated 2<sup>nd</sup> June 2021. This confirmed that the issues had helpfully been narrowed. He confirmed that he was the leaseholder of the flat and that he had purchased the property in August of 2006. It appears that the property was rented out to assured shorthold tenants and he took pride in ensuring that the Flat was “aesthetically pleasing and comfortable for my tenants.” The property in which the Flat is to be found is in a good central London location, close to Hyde Park and Oxford Street just off the Edgware Road. He said in his statement that this resulted in a good level of income but because the communal areas did not meet the expectation of a building located in such a locality this had resulted in tenants declining to enter into agreements with him. It does not appear that he has lived at the building, but he confirmed he visited on a regular basis.
15. He told us in his witness statement that the property had been the subject of a number of floods which had caused damage. His view was that the service charges claimed were not reasonable. A number of photographs were attached to his statement which we saw. His witness statement at paragraph 12 listed the concerns with the common areas. The statement also challenged the costs of maintaining what he considered to be a small lift. We noted all that he said.
16. In his oral evidence to us he supported his concerns about the condition of the common areas, in particular the carpet which was repaired with what looked like tape but was rucked and with holes. He said he had not seen cleaning but instead had seen rats and cockroaches. The windows were old and dirty and that the photographs we had were two to three months old and were taken by him. He confirmed that he did report these matters to the porter, but nothing was done. It seems in his view the first, second and third floors were the worst and that higher up for example on the eighth floor, he thought the tenants had undertaken decorating and carpeting themselves. The decorations were generally in a very poor state, although the reception area was well decorated. He did not think that the common parts on his floor level had been decorated since he acquired the

property. Apparently, the exterior had been refurbished but this was some 10 years ago.

17. He was also worried at the poor standard of lighting which he considered to be sub-standard.
18. On the question of the lift, he said there were two but they were quite often not working. He referred us to copies of lift maintenance invoices and invoices for specific items of work.
19. Insofar as management costs were concerned, he was of the view that the management fee was a fixed amount of £4,875 but in the estimated accounts for 2019/20 it is shown as £5,943. There are apparently 106 flats in the building. He did not produce any comparable evidence.
20. He was asked some questions by Mr Semakula and confirmed that there was a pest control problem at the property but that steps were being taken. He did not think that cleaning was done given the state of the carpets and that the lighting reminded him of a cemetery. He had challenged the electrical costs but accepted that they were needed both for the common parts and the lift. In connection with the issues generally he confirmed the following a. there was no challenge to electricity if this was based on the metre readings; b. he accepted the lifts were maintained but they are frequently broken down and the costs associated do not justify the number of breakdowns. He agreed that he was the only lessee who was challenging these matters.
21. After the luncheon adjournment we heard from Mrs Foster in replacement of Miss Walton. She confirmed she was Head of Property Management and that she did adopt her colleague's statement. It appears that she had taken over the property in 2004 when the then managing agents were acquired and became part of HML. She confirmed the building had not been refurbished in HML's time. Although the section 20 application was not pursued, we were shown an enforcement notice from the London Fire and Emergency Planning Authority dated 25<sup>th</sup> September 2014 which set out works that were required to comply with the Regulatory Reform (Fire Safety) Order 2005 issued the London Fire and Emergency Planning Authority on 19<sup>th</sup> September 2014.
22. A section 20 notice had been issued on 4<sup>th</sup> November 2014 which provided for the improvement of fire safety as per the Brigade's notice but also the removal of asbestos, repairing and replacing communal hallway windows, internal repairs and decoration and communal flooring replacement. However, it appears that funds were not available to do anything more than the fire safety works and the asbestos removal, as required. The other matters relating to the improvement of the communal hallways are due to take place when funds are available. Apparently, the managing agents were told by the Applicants that they would not carry out further works to the common parts until all arrears had been cleared as owed by tenants. We were told that there was something in the sum of £500,000 owing in arrears and that steps were being taken by HML to recover these monies. Miss Foster considered that the existing section 20 notice would still stand, and the works would be undertaken when funds were available.
23. She dealt with the specific matters, confirming that the caretaker attends daily and deals with spillages and stain removal. The contract is tendered annually

and there are the same duties for all floors at the property. The windowsills are, she told us, cleaned.

24. She did confirm that there were problems with pests but that controls were in place.
25. As far as the electricity was concerned, this was tendered for annually and included lighting, both ordinary and emergency, lifts, pumps and door entry. As far as the lighting was concerned the porter replaced bulbs as and when, but otherwise contractors were brought in to undertake further works. Asked about the improvements for the lighting she confirmed that those would be done at the time the decorations were done.
26. On the question of lifts, she said there were quarterly attendances, and, in her view, there was always one lift working at all times. She said that they did not get many calls from leaseholders saying lifts were out of action. On the question of management fees, she confirmed that these were based on a 10% sum arising from previous year expenditure. We were provided with a copy of an agreement dated 8<sup>th</sup> September 2005 between the Applicants and Alan Foster & Associates, the company that had been acquired by HML. This agreement in fact provided that the fee would be at the rate of 15% plus VAT of the expenditure properly incurred by the agent in the performance of his obligations under the agreement, payment to be made monthly on account. We noted the contents of the agreement and were told by Miss Foster that although the figure appeared to be 15%, they were operating on a 10% margin.
27. She told us that there had been arrears on Mr Franzini's account when they took over in 2014 and that litigation had followed.
28. She was asked some questions by Miss Fard and confirmed that she had worked for HML for some four years. She was not however directly involved in the management of the building as that was originally done by Mr Goldsmith and now Miss Walton. It appears that she had never attended site but had had meetings with the residents' association. The porter liaised with Miss Walton in respect of various matters, and she believed that services provided were to a good standard.
29. Asked about the cleaning she confirmed that the same company was providing the cleaning services and had done for a time, but it was tendered on an annual basis. It was also understood that the porter would check that the works had been done. As to lighting she could not say when works would be undertaken as that would be recommended by the contractor. As to the lift she confirmed that the contractor attended breakdowns usually within 24 to 48 hours.
30. After we received the evidence, we heard from Mr Semakula Miss Fard indicating that she did not consider there was anything more that she needed to add. He confirmed the sums in dispute and that the crux of the proceedings was really reasonableness. There was no specific challenge to payability and no real evidence from the Respondent concerning items such as cleaning and the lift bearing in mind that he does not live at the building. Although internal decorations and other improvements are planned, these have not yet been done because of the lack of monies but of course the Respondent had not been charged for this. The sinking fund in 2019 was circa £500,000 but as at today stands as

£253,447. He asked that we dismiss the claim and that there be judgement for the arrears with costs and interest to be considered separately.

## **DECISION**

31. In Mr Franzini's application number LON/00BK/LSC/2021/0023 there were no specific challenges to the service charges. In respect of the years in dispute the challenges were as we have highlighted above. We must say that from viewing the photographs of the carpets, particularly on the stairs, they look potentially dangerous. They are repaired with Duct tape and holes are present. We can understand Mr Franzini's concern that this impacts on the letability of the flat. However, in this regard it seems to us that no counterclaim having been made in the County Court, the way forward for him, if he so chooses, would be to make an application to the Court for damages associated with the lack of repair. We can add nothing more than that, other than to express some surprise that there is nigh on quarter of a million pounds in the reserve fund account, which could perhaps have been utilised to deal with the state of repair of the common parts. We equally however accept the Applicant's position that with arrears of service charges standing, as we understood at some half a million pounds, the desire to collect this money in first before funds are expended is not wholly unreasonable.
32. Dealing with the specific issues raised by Mr Franzini in his skeleton argument prepared by Miss Fard, we say as follows concerning those various matters.
33. As to the cleaning and general cleanliness of the communal areas it seems to us that cleaning was being done. None of the photographs show any litter or the existence of vermin and we were told that the cleaning took place regularly and we saw the cleaning invoices in respect thereof. Accordingly, we do not consider that the charges made in connection with cleaning are unreasonable and should be allowed. In the Scott Schedule prepared by Mr Franzini the objections are usually associated with the lack of the production of invoices and contractual evidence and in some cases the difference between the figures charged in the year 2018/19 and 2019/20. One does have to remember however, that in the years 2019/20 these were estimated costs. We also note that the section 20 challenge has fallen away and have seen the later section 20 notices in December of 2015 dealing both with the asbestos removal and the fire prevention works. The sums involved are quite extensive, for example the proposed works for the fire improvement were some £751,712.25. Certificates of payment in relation to those matters were produced.
34. In connection with the other issues, we can only say this. Although the lighting, the lifts and the internal decoration issues were raised, the provisions in connection with the internal decorations and improvements are in hand as we have indicated above. Although it may well be that there are issues with the lighting, there was no real challenge to the costs spent and insofar as the lifts were concerned, we do feel that Mr Franzini rather over-egged the pudding as stating that the lifts were frequently not working as this was not borne out by any of the invoices which were produced, which showed the quarterly attendances and only a limited number of call outs. The management charge is in accordance with the provision of the contract which was produced to us and of course the estimated charge is just that. For the year 2018/19 final accounts were available at page 224 of the bundle which bear the signature of Rawi & Co Associates, Chartered Accountants of Ebury Street and show the actual costs incurred to

September 2019 in respect of the various matters. Of those items challenged by Mr Franzini the lift repairs had reduced considerably from the previous year, the pest control was at a similar level as was the cleaning. The electricity in fact was some £13,000 less than the year before and the management fees some £5,000 less than the year before. There is no evidence accordingly in the actual accounts for the year ending 28<sup>th</sup> September 2019 that the costs were unreasonable, and we are not satisfied that Mr Franzini has made a challenge to persuade us that we should make any alterations to those costs.

35. In respect of the estimated charges for the period 2019/20 those appear at page 204 of the bundle and an examination of those would indicate that the budgeted figure is not far removed from the budgeted figure for the earlier year. The budgeted figure for 2019/20 was £379,035 plus £200,000 payment to the reserve funds. If one then considered the actual costs incurred in 2019 these including a contribution to the reserve fund of £185,000 showed a figure of £564,297 and would therefore appear to support the view that the budgeted figures for 2019/20 were not unreasonable and are payable. Obviously, they could be reviewed upon production of the final accounts for that year.
36. As we have indicated above, we do not propose to deal with the later years included in Mr Franzini's own application. If he wishes to pursue those then he will need to contact the Tribunal, lift the stay that we have put in place and ask for some directions to be issued.
37. Insofar as interest and costs are concerned, we make the following directions.
  1. The Applicants will within 28 days of the date of this decision provide written statement as to
    - a. the entitlement to recover costs by reference to the terms of the lease and any other provisions that entitle the recovery of costs in the proceedings against Mr Franzini;
    - b. a full breakdown of those costs including details of the fee earner and time spent which should be included on a Form N260 so that a summary assessment can take place.
  2. The Applicants to provide a calculation as to the interest that may be payable in respect of the sums involved.
  3. The Respondents shall reply to the Applicant's statement as to the entitlement as to costs and in addition will provide a response to the summary of costs in Form N260 indicating what matters can be agreed and what matters remain in issue and a response to the interest calculation. These documents are to be provided within 28 days of the Applicants submitting the papers provided at paragraph 1 of the directions.
35. Within 14 days of the Respondents providing the documentation set out at paragraph 3 the Applicant shall provide a bundle in PDF form as required in these proceedings to the Tribunal who will then consider the matter within the four-week period of the date of lodgement of the documentation. Such consideration will be on a paper determination basis unless either party within 56 days of the date of this decision notifies the Tribunal of its wish to have these issues determined at a hearing. If that is the case further directions will be given as to the hearing date and the steps to be taken.



Andrew Dutton

Judge: \_\_\_\_\_  
A A Dutton

Date: 9 July 2021

### **ANNEX - RIGHTS OF APPEAL**

#### *Appealing against the tribunal's decisions*

1. 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.
2. 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.
3. 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.
4. 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
5. 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 County Court decision*

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. 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.
4. 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.
5. 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.

6. 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 (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. 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 County Court*

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

## General Form of Judgment or Order



<b>In the County Court at Central London</b>	
<b>sitting at 10 Alfred Place, London WC1E 7LR</b>	
<b>Claim Number</b>	<b>G84YX791</b>
<b>Date</b>	<b>9 July 2021</b>

<b>Intercontinental Developments Limited</b>	<b>Claimant Ref</b>
<b>Antonio Maria Franzini</b>	<b>Defendant Ref</b>

**BEFORE Tribunal Judge Dutton, sitting as a Judge of the County Court (District Judge),  
with Mrs A Flynn MA MRICS as assessor**

UPON the claim having been transferred to the First-tier Tribunal for administration on 24 November 2020 by order of Deputy District Judge Redpath Stevens sitting at the County Court at Central London

AND UPON hearing Mr Joel Semakula for the Claimant and Miss Sherry Fard for the Defendant

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

### **IT IS ORDERED THAT:**

1. The Defendant shall pay to the Claimant by 16 August 2021 the sum of £8,494.10 being the sum found due and payable in respect of service charges, ground rent;
2. 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 9 July 2021 under case reference LON/00AY/LSC/2020/0369.
3. Costs and interest will be considered in due course, if required.

Dated: 9 July 2021