



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

Case reference : **LON/00AH/LSC/2022/0041**

Property : **Flat 10, Red House Apartment,
Sanderstead Road, South Croydon CR2
0AG**

Applicant : **Mr D Keeling**

Representative :

Respondent : **Assethold Ltd**

Representative : **Eagerstates Ltd**

Type of application : **For the determination of the
reasonableness of and the liability to
pay a service charge: Preliminary issue**

Tribunal members : **Judge S Brilliant**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **05 May 2022**

DECISION ON PRELIMINARY POINT

Decision of the Tribunal

- (1) The Tribunal determines that the present application is an abuse of process and is struck out pursuant to rule 9(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

1. In proceedings LON/00AH/LSC/2020/0061 (“the earlier application”), the Applicant challenged the Respondent’s claim for service charges between 25 December 2018 and 11 May 2019 (when an RTM company took over).
2. The Applicant’s challenge related to 20 different items claimed by way of service charge. The total amount in issue was £19,652.72.
3. In a careful decision dated 06 July 2021 made by Prof Abbey and Mr Waterhouse FRICS, the Tribunal found in favour of the Applicant in respect of certain items and found in favour of the Respondent in respect of the remaining items.
4. The issues before the Tribunal on that occasion were reasonableness and payability.
5. The Applicant did not raise before the day of the hearing the issue of whether the service charges were demanded outside the time period imposed by s.20B of the 1985 Act. The Tribunal would not allow him to do so in those circumstances.
6. In the current proceedings, the Applicant challenges exactly the same service charges as he did in the earlier application. His sole ground now is that the service charges were demanded outside the time period imposed by s.20B of the 1985 Act.
7. The Respondent says that, in these circumstances, it is an abuse of process for the Applicant to be raising in the present application what he should have raised in the earlier application.
8. The Applicant denies that it is an abuse of process and wishes to proceed to a hearing on the merits of the present application.
9. In my judgment, the present application is an abuse of process and should be struck out.
10. Power to do this is to be found in rule 9(3)(d) of the Tribunal Procedure (First–tier Tribunal) (Property Chamber) Rules 2013.
11. This rule goes back almost 2 centuries to the principle first formulated by Wigram VC in Henderson v Henderson (1843) 3 Hare 100, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier one.
12. This is not an inflexible rule. The question in every case is whether, applying a broad merits based approach, the Applicant’s conduct is in all the circumstances an abuse of process: Johnson v Gore Wood & Co (No.1) [2002] 2 AC 1, HL.

13. No or no sufficient explanation has been given by the Applicant as to why he failed to raise the s.20B point in the earlier hearing.

14. In my judgment, and adopting a broad merits based approach, I consider it would be grossly unfair on the Respondent for it to have to face the present application, when it has already spent time and money dealing with the period in question.

15. It is also a waste of judicial time and unfair on other parties who need their cases to be listed as promptly as possible.

Name: Simon Brilliant

Date: 05 May 2022

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).

