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

Case Reference : **LON/00BK/LSC/2016/0383**

Property : **40 Cleveland Mansions, Widley Road, W9 2LB**

Applicant : **Mr Echewodo Nwawudu**

Representative : **In person (assisted by Ms McDonnell)**

Respondent : **SCMLLA (Freehold) (Limited)**

Representative : **Mr Nuttal (Counsel)**

Type of Application : **Liability to pay Service Charges**

Tribunal Judge : **Mr M Martyński**

DECISION

Decision summary

1. The Applicant's application is struck out.

Background

2. By an application dated 13 October 2016 the Applicant applied to the tribunal for a determination as to the payability of Service Charges for the years 2009 to 2014. In that application the Applicant included a number of questions that he wanted the tribunal to determine.
3. There is a previous determination of this tribunal regarding Service Charges in the subject building dated 29 May 2012. That decision covered various Service Charges at the building covering a period from 2009 to 2012.
4. In late November 2015, the Respondent issued proceedings against the Applicant in the County Court. That claim is for the sum of £25,039.70 and is in respect of Service Charges, Administration Fees and costs covering a period from 1 November 2011 to 31 July 2014.
5. The Applicant filed a defence to these proceedings dated 6 January 2016. In that defence the Applicant, as well as contending that the sums claimed were not due, alleged that the charges were not reasonable in amount and asked for the action to be transferred to this tribunal.
6. The County Court proceedings were transferred to Bromley where D.J. Brett made an order dated 15 March 2016 stating that the parties should, by no later than 20 April 2016, make representations as to why the issues raised in the proceedings should not be transferred to this tribunal.
7. The Respondent sent representations (dated 20 April 2016) to the County Court at Bromley arguing that the claim should remain in the County Court.
8. The next notification from the County Court comes by way of an order from the County Court sitting at Central London dated 12 July 2016. That order allocates the action to the Fast Track and gives directions leading to a trial window of 9-27 January 2017.
9. By letter dated 3 November 2016 and notice dated 31 October 2016, this tribunal notified the parties that it was minded to strike out the Applicant's application dated 13 October 2016 pursuant to Rule 9(3) (d) of The Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013 on the grounds that there were on-going proceedings in the County Court at Central London which appeared to deal with the same issues as were raised in the application

Decision

10. This application should not be permitted to continue for the following reasons.
 - (a) The issues raised in the Applicant's application and those being dealt with currently in the County Court are exactly, or very nearly exactly the same.
 - (b) To allow the application to proceed would mean that there would be two separate parallel legal proceedings proceeding in two venues dealing with the same questions. This would be a waste of the parties' time and money and a waste of public resources.
 - (c) The County Court proceedings were issued almost a year ago, the Applicant's application was made approximately a month ago. Simply in terms of chronological fairness, absent any compelling reason why not, the Respondent's claim should take precedence.
 - (d) The Applicant has failed to take any steps to either get the County Court proceedings transferred to this tribunal or to stay the County Court proceedings. It is the Applicant's case that he did not receive the order from Bromley County Court asking for representations as to whether the matter should be referred to this tribunal. He did however receive the Respondent's representations made to the County Court on that question and failed to take any action regarding that. The Applicant did receive the order from the Central London County Court in July 2016 which set the Respondent's claim on the Fast Track and gave directions – again he failed to take any action regarding that order.
 - (e) Any issues that the Applicant seeks to raise in his application should have been raised in his defence to the County Court proceedings as soon as the Applicant was aware that the proceedings were not going to be transferred to this tribunal.
 - (f) The trial for the proceedings in Central London County Court has been set for January 2017. The parties have, or should have, been complying with directions and preparing for that trial. It would not now be appropriate for this tribunal to give further directions on the Applicant's application.
 - (g) The questions raised in the Applicant's application (insofar as they are proper questions to be asked in civil proceedings) can be answered by the County Court (assuming that the Applicant is given permission to amend his defence ((if necessary)) by the County Court to raise such questions.

- (h) It appears that, insofar as the Applicant is seeking to challenge Service Charges up to the end of 2011, those have previously been determined by this tribunal.
 - (i) There would be no point in putting a stay on the Applicant's application to this tribunal. If there are any issues that the County Court is unable or unwilling to determine, and if those issues fall within this tribunal's jurisdiction, those issues can be transferred to this tribunal for determination after the trial in the County Court. The Applicant has had ample time to raise any issues he has regarding the Service Charge in the County Court proceedings.
11. It therefore appears to me that for the reasons given above, this application is an abuse of process and should be struck out.

Name: Mark Martyński,
Tribunal Judge

Date: 15 November 2016