

12/20



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

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

Tribunal reference : **LON/00AL/LSC/2016/0434**

Court claim number : **C81YM047**

Property : **24 Cottrell Court, Southern Way,
London SE10 0DW**

Applicant/Claimant : **GMV Management Limited**

Representative : **Brethertons LLP**

Respondent/Defendant : **Mr Thomas John Esqulant &
Mrs Louise Esqulant**

**Judge before the
tribunal and the court** : **Judge Timothy Powell**

Date of decision : **28 March 2017**

DECISION

Summary of the Decisions Made

The total sum of **£6,941.88** is payable by the respondents, Mr and Mrs Esqulant, to the applicant, GMV Management Limited **by 11 April 2017**. That sum comprises:

- (i) Service charges: £4,488.14;
- (ii) An administration charge of £96.00;
- (iii) Legal costs under clause 3.7 of the lease to 3.9.16: £642 (inclusive of VAT);
- (iv) Interest of £168.54 to 28.3.2017, and continuing at the rate of £0.52 per day from 29.3.2017 until payment;
- (v) Further legal costs under clause 3.7 of the lease to 28.3.17: £1,342.20 (inclusive of VAT);
- (vi) County court fees: £205.

The application

1. The applicant freeholder seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and an administration charge payable by the respondent leaseholders, Mr and Mrs Esquant, all in respect of 24 Cottrell Court, Southern Way, London SE10 0DW (“the premises”).
2. Proceedings were originally issued against the respondents on 16 September 2016 in the Northampton County Court Money Claims Centre under claim number C81YM047. The respondents filed a Defence dated 23 September 2016, indicating that the full amount claimed in the Claim Form was disputed, because the charges were “extortionate”. The proceedings were then transferred to the County Court at Clerkenwell & Shoreditch and then to this tribunal by the order of District Judge Sterlini dated 17 November 2016.
3. The tribunal issued directions on 28 November 2016 and the matter eventually came to a paper determination in the week commencing 13 March 2017.

The determination

4. Following correspondence between the tribunal and the parties, the issues in dispute were narrowed and the applicant then filed and served a hearing bundle, which addressed the outstanding matters.
5. I considered the papers after 13 March 2017 and this is my determination.

The background

6. The subject property is a ground and first floor leasehold property that forms part of the Millennium Village on the Greenwich Peninsula, London SE10.
7. The respondents hold a long lease of the subject property dated 1 February 2002 and originally made between (1) Greenwich Millennium Village Limited, (2) GMV Management Limited and (3) Moat Home Ownership Limited for a term of 999 years (less 10 days) from and including 17 November 1999 (“the Lease”).
8. The Lease requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
9. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

The issues

10. The "Amount claimed" against the respondents on the Claim Form was for the total sum of £5,795.50, comprising:
 - (i) Unpaid service charges of £4,488.14;
 - (ii) A late payment administration fee in the sum of £96;
 - (iii) Legal costs under clause 3.7 of the lease to 3.9.16: £1,158;
 - (iv) Interest of £53.36 calculated to 3.9.16 (and continuing at the daily rate of £0.55 to the date of judgment or earlier payment);
11. In addition, the applicant sought:
 - (v) The county court fee of £455;
 - (vi) Legal representative's (fixed) costs of £100; and
 - (vii) "Further or other relief" and "Costs", taken to mean further legal costs pursuant to the terms of the lease (if quantified).
12. In correspondence with the tribunal, the respondents indicated that they no longer disputed the sum of £4,488.14, in respect of unpaid service charges, nor the administration charge of £96.00. However, they did still dispute the legal costs of £1,158.00 to 3.9.16; interest of £53.36 to 3.9.16; further costs under the lease from 3.9.16 (if quantified); and the court issue fee.

County court issues

13. The county court order transferring issues to the tribunal was in very wide terms: "Case transferred to First-tier Tribunal (Property Chamber)." On the strength of this, the tribunal directions made clear that: "As the court has transferred the whole case, the tribunal intends to deal with the issue of contractual costs payable by Mr and Mrs Esquant, at the same time as deciding the payability of the service charges. The tribunal is empowered to do so as a result of amendments made to the County Courts Act 1984, by which judges of the First-tier Tribunal are now also judges of the county court. This means that, in a suitable case, the tribunal can decide issues that would otherwise have to be separately decided in the county court; and this might result in savings in time, costs and resources." No objection was received from either party to the tribunal dealing with all issues in the case.
14. Accordingly, I presided over both parts of the determination, which has resolved all matters before both the tribunal and the court. These reasons will act as both the reasons for the tribunal decision and the reasoned judgment of the county court, where a separate order has been made.

Determinations and reasons

15. Documents in the hearing bundle are referred to by their page number, in square brackets.

1. Claim for interest

16. With the regard to interest claimed on the unpaid sums, the applicant sought this as a matter of contract pursuant to clause 2.5 of the Lease [151], which states:

“If any rent or any other sum due under this Lease is unpaid for more than twenty-one days (whether formally demanded or not) the Tenant shall pay Interest calculated on a daily basis on the amount unpaid from the date on which it was due until the date on which payment is made and to be payable to the Landlord on demand and recoverable as rent in arrear.”

17. By clause 1.1, “Interest” is defined [147] as being interest at the rate of 4% per annum above the base rate for the time being of HSBC Bank plc, a base rate that I understand is 0.25%. This makes an effective interest rate of 4.25%.
18. It is clear that interest is a contractual right and I calculate that the interest due to the date of this decision is £168.54, as per the interest calculation annexed, with interest continuing at the rate of £0.52 per day from 29 March 2017, until the date of payment.

2. Applicant’s claim for costs under the lease

19. According to its Statement of Case, the applicant claimed legal costs up to the date of issue of the county court proceedings of some £840 (including VAT), not the £1,158 as set out in the particulars of claim [136]. In addition, the applicant claimed further costs of £1,118.50 plus VAT for the post-issue costs of both the county court and the tribunal proceedings.
20. The contractual right to costs was said to arise from clause 3.7 of the Lease and the applicant also relied upon the Court of Appeal decision in *Chaplain Ltd v Kumari* [2015] EWCA Civ 798 (“*Chaplain*”). The matter was simply put [136]: “As the service charge was not paid when demanded in breach of the Lease, Brethertons were instructed to take legal action.”

My decision

21. I am satisfied that the applicant management company is entitled to an order for the recovery of its costs against the respondent lessees, not as an award of costs by the court or tribunal under the respective procedure rules, but as a matter of contractual entitlement under clause 3.7 of the Lease, for the following reasons.

My reasons

22. It is clear that, in all cases, the award of costs is in the discretion of the court: see section 51 of the Senior Courts Act 1981; and this discretion cannot be fettered by the parties, even by way of a contractual agreement.
23. The applicant claimed to recover its costs of both the county court and tribunal proceedings, as a matter of contractual entitlement, under clause 3.7 of the Lease. That clause states that:

“The Tenant shall pay to the Landlord and the Management Company (as appropriate) on a full indemnity basis all costs and expenses incurred by the Landlord or the Management Company (as appropriate) or the relevant party’s solicitors in enforcing payment by the Tenant of sums due to be paid by the Tenant under the terms of this underlease.”
24. The effect of the Court of Appeal in the *Chaplain* decision is that, while the tribunal is a “no-cost” jurisdiction and is unable to make any award of in respect of a party’s costs (save where there has been unreasonable conduct), the county court *can* make an award *equivalent to* the costs incurred - of both tribunal proceedings and court proceedings on the small claims track - where there is a *contractual entitlement* to such costs.
25. At paragraph 45 of *Chaplain*, Lord Justice Patten observed [187] that “a contractual claim for a costs indemnity should ordinarily be given effect to [...] but that does not alter the fact that it remains a contractual entitlement which the court will enforce subject to its equitable power to disallow unreasonable expenses.”
26. It is therefore clear that the award of costs and the extent of costs remain firmly within my discretion; and this is also confirmed by the decisions of *Gomba Holdings (UK) Ltd v Minorities Finance Ltd (No 2)* [1993] Ch 171 and *Church Commissioners v Ibrahim* [1997] EGLR 13, both of which were approved, applied and quoted by the Court of Appeal in *Chaplain*.
27. Furthermore, any costs that may be awarded to the landlord will fall within the definition of an “administration charge” within the meaning of paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002: see *Christoforou v Standard Apartments Limited* [2013] UKUT 0586 (LC), LRX/84/2012 and LRX/88/2012.

28. Paragraph 1 of Schedule 11 to the 2002 Act states:
- “1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly— [...]
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.”
29. Under paragraph 2, a variable administration charge is payable only to the extent that the amount of the charge is reasonable; and by paragraph 5, application may be made to the First-tier Tribunal to determine whether such a charge is payable and reasonable in amount. As such, I have a continuing role sitting as a tribunal judge to consider whether the sums claimed are payable and reasonable.
30. I turn now to *the amount* of the landlord’s costs.

Amount of costs

Submissions by the lessees

31. The respondents had not responded directly to the amounts claimed by way of legal costs, save to say in the Defence, in respect of the pre-issue costs, that the applicant’s costs and fees “are extortionate”. In later correspondence with the tribunal (copied to the applicant’s solicitors), the respondents, while accepting that the service charges had to be paid, asked “the Court to look at the fee structure as they have been profiteering off a considerable percentage of the 1110 residents of GMV for many years”.

Submissions by the management company

32. The applicant provided two schedules of costs setting out the work carried out and the fees claimed by Brethertons, but without providing an indication of the fee earner involved, the hourly rate applied or the time spent. Although it was not entirely clear, the tables appeared to show the work that Brethertons would do at each stage of the instruction, with what appeared to be a fixed fee for that stage, much like a menu of (agreed) costs provided to a client.

Assessment of the applicant’s costs

33. With regard to the pre-issue costs, the overall claim of £840 (including VAT) does not appear excessive. However, while it is difficult to relate the stage fees with actual work carried out, one item in the table does cause me some concern. This is the Stage 4 fee, whereby Brethertons charged £165 plus VAT (i.e. £198 in total) for drafting a section 146 notice.

34. I cannot allow that fee to be claimed from the respondents, as is clear from section 81 of the Housing Act 1996 that a landlord may not exercise a right of forfeiture (under section 146 of the Law of Property Act 1925) without first obtaining a determination from the court or tribunal that the amount of the service charge or administration charge in question is payable. To claim this fee at this stage is therefore premature.
35. I will therefore limit the pre-issue costs to £642 inclusive of VAT (i.e. £840 - £198).
36. With regard to the post-issue costs, while no timings are given, once again the overall claim of £1,118.50 plus VAT (i.e. £1,342.20 in total) does not strike me as excessive, especially in the absence of any specific challenges from the respondents. I therefore allow these costs in full.

3. County court issue fee

37. The respondents challenged the £455 county court issue fee incurred by the applicant, saying that the inclusion of Brethertons' charges in the "Amount claimed" in the Claim Form placed the court issue fee at a higher level than it would otherwise have been.
38. I have looked at the form EX50 supplied by the applicant [190], which shows that the court fee payable for a claim greater than £5,000 but no more than £10,000 is £455, the amount claimed by the applicant.
39. However, I am not convinced that the right approach has been taken in this case. The principal debt was for £4,488.14 and, together with a small amount of interest, *this* was the true value of the claim. There had been no separate demand for an administration charge in respect of the pre-issue costs in the sum of £840 (including VAT) (or £1,158 as originally calculated); and such costs did not appear on the "Account History" attached to the Particulars of Claim.
40. In my opinion, those pre-issue costs were exactly that: they formed part of the litigation costs that, in due course, the claimant/applicant would ask the court to award as a matter of contractual entitlement under the Lease; and they did not form part of the claim for money and interest, referred to in EX50, which was the subject of the claim. By including the legal costs as part of the principal debt, the overall value of the claim was artificially inflated, to the detriment of the defendants.
41. Therefore, I conclude that the appropriate "Value of claim" fell within the range of "Greater than £3,000 but no more than £5,000" and that the appropriate court issue fee was therefore £205, not £455.

Conclusion

42. By way of conclusion, I make those awards in favour of the applicant as are set out in the Summary of the Decisions Made at the beginning of this decision. All payments are to be made by 11 April 2017.

43. As all of the county court issues have been dealt with, I have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Clerkenwell & Shoreditch, to be entered there in the court's records.



Name: Judge Timothy Powell **Date:** 28 March 2017

Annex: calculation of interest sheet

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).

Annex: Calculation of Interest

Calculation of interest payable on arrears of service charges allowed by the tribunal - up to 28.3.17

24 Cottrell Court, Southern Way, Greenwich Millennium Village, London SE10 0DW

By the Second Schedule of the lease, on-account payments are payable quarterly in advance on the Rent Payment Days

By clause 2.5 of the lease, unpaid charges bear interest at 4% above base (i.e. at a composite rate of 4.25%)

Date	Item	£ amount	£ payable	Days to 28.03.17	Interest rate %	Interest £
22.03.16	Account balance		0.00			
25.03.16	Estate service charge	305.61				
	Cottrell Court House Service	106.95				
	Moseley Row Car Park Service	51.43				
	Estate Rerve Fund	40.99				
	Cottrell Court Houses Reserve	1,576.51				
	Moseley Row Car Park Reserve	65.56				
	Additional Insurance Premium CH	90.72				
	Additional Insurance Premium MCP	6.30	2,244.07	368	4.25	96.16
24.06.16	Estate service charge	305.61				
	Cottrell Court House Service	106.95				
	Moseley Row Car Park Service	51.43				
	Estate Rerve Fund	40.99				
	Cottrell Court Houses Reserve	1,576.51				
	Moseley Row Car Park Reserve	65.56				
	Additional Insurance Premium CH	90.72				
	Additional Insurance Premium MCP	6.30	2,244.07	277	4.25	72.38
			4,488.14			168.54

And contractual interest continuing at **£0.52** per day from 29.03.17 until payment

General Form of Judgment or Order

In the County Court at 10 Alfred Place, London WC1E 7LR	
Claim Number	C81YM047
Date	28 March 2017

GMV Management Limited	1st Claimant Ref: VEF/202795-00288
Mr Thomas John Esqulant	1st Defendant Ref
Mrs Louise Esqulant	2nd Defendant Ref

BEFORE Judge Timothy Powell, sitting at the County Court at 10 Alfred Place,
London WC1E 7LR

UPON consideration of the written submissions of both parties and, with their consent,
making a determination on the papers, without a hearing

IT IS ORDERED THAT:

1. The Defendants shall pay to the Claimant by 11 April 2017 the sum of **£6,941.88**, being the total sum found due and payable in respect of the premises at 24 Cottrell Court, Southern Way, London SE10 0DW, as follows:
 - (i) The sum of £4,752.68 in respect of service charges, an administration charge and interest to the date of judgment; and
 - (ii) The sum of £2,189.20 in respect of the Claimant's summarily assessed contractual costs under the lease and the court issue fee.
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 28 March 2017, under case reference LON/00AL/LSC/2016/0434.

Dated: 28 March 2017