



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and IN
THE COUNTY COURT at Chesterfield
Sitting at Chesterfield Justice Centre
Tapton Lane Chesterfield S41 7TW**

Case References : **BIR/00NG/LIS/2019/0029
BIR/00NG/LIS/2019/0028
BIR/00NG/LIS/2019/0043
BIR/00NG/LIS/2019/0044
BIR/00NG/LIS/2019/0046**

Court claim number : **F42YJ181 & F42YJ179 consolidated with
F42YJ183, F42YJ182 & F42YJ180**

Property : **1, 2, 3, 4 & 6 Newthorn Place, Marine Road,
Prestatyn. LL19 7HY**

**Applicant
Claimant** : **Tapestart Limited**

**Applicant's
Representative** : **Compton Group (Litigation Team)**

Respondent (1) : **Martin Duncan Scholes**

Respondent (2) : **Etadom Limited**

Applications : **Application for a determination of
liability to pay and reasonableness of service
charges pursuant to s27A Landlord and
Tenant Act 1985 (the Act)**

Date of Hearing : **9 October 2019**

Tribunal : **Judge P. J. Ellis**

In the County Court : **Judge P.J. Ellis (sitting as a District Judge of
the County Court)**

Date of Decision : **22 October 2019**

DECISION

Decision made by the FTT

- 1. The amounts claimed by the Applicant from the first Respondent for service charges and buildings insurance on the due dates as set out below**

Service Charge

25 December 2016 : £668.03

3 July 2017 : £397.40

2 August 2018 : £254.33

Insurance

25 March 2017 : £130.22

25 March 2018 : £152.01

And the managing agents administration costs of £66.00 and land registry fee of £3.00

are reasonable and payable by the first Respondent for each of the properties 1,2,3 & 4 Newthorn Place.

- 2. The amounts claimed by the Applicant from the second Respondent for service charges in the sum of £254.33 due on 2 August 2018 and managing agents administration costs in the sum of £66.00 and land registry fee of £3.00 are reasonable and payable by the second Respondent for 6 Newthorn Place.**

Decisions made by the County Court against the first Respondent for the total sums payable in respect of 1,2,3 & 4 Newthorn Place:

- 1. Judgment for the sum of £6407.96 for service charges and insurance.**
- 2. Judgment for the additional sum for administration costs in the sum of £276.00**
- 3. Contractual Interest from fourteen days from the date of demand until issue of proceedings £352.80**
- 4. Contractual interest from date of issue to 09 October 2019 £111.44**
- 5. Interest at 4.75% from the date of judgment until payment at the daily rate of 0.14p until payment**
- 6. Costs in the sum of £5073.00 including VAT counsel's fee and court fees summarily assessed.**

Decisions made by the County Court against the second Respondent

- 1. Judgment for the sum of £254.33 for service charges relating to 6 Newthorn Place**

- 2. Judgment for the additional sum of £69.00**
- 3. Contractual interest from fourteen days after demand until issue of proceedings £6.75**
- 4. Contractual interest from date of issue to 09 October 2019 £5.97**
- 5. Interest continues at 4.75% from the date of judgment until payment at the daily rate of 0.03p until payment**
- 6. Costs in the sum of £538.72 including VAT and court fee summarily assessed.**

Introduction

1. This is a case which concerns relatively small claims for unpaid service charges and administration allegedly due from the Respondents to the Applicant for years 2016, 2017 and 2018 in the case of the first Respondent and for 2018 in the case of the second Respondent. The several claims issued in the county court by the Applicant were transferred to the First-tier Tribunal (Property Chamber) for determination of the reasonableness and payability of the service charges. Upon transfer the claims were allocated individual matter numbers but were consolidated for hearing at the same time as the issues arising in each case were the same pursuant to Rule 6(3)(b) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Also the Tribunal directed that they be dealt with under the deployment project so that all matters of costs and interest could be dealt with at the same hearing.

The Parties

2. The first Respondent Martin Scholes (Mr Scholes) is the proprietor of four of the maisonettes being numbers 1,2,3 &4. The Second Respondent is a company owned by Mr Scholes. It is the owner of 6 Newthorn Place. The last property is owned by an owner occupier who is not involved in these proceedings. All of Mr Scholes properties are occupied by his tenants.
3. The Applicant is responsible for the management of Newthorn Place and the provision of services the subject of landlord's obligations under the leases.

4. Unfortunately, there is a history of unpaid service charges and the costs and misapprehensions regarding settlement terms of previous proceedings have contributed to some extent to the causes of the present dispute.

The Properties and Leases

5. The Tribunal has not inspected the properties the subject of the claims it being uneconomic and unnecessary to do so having regard to the issues in dispute. From the papers it is understood that the properties in this case are part of a development of three two storey buildings each comprising two maisonettes on the upper and lower storey together known as Newthorn Place, Marine Road, Prestatyn.
6. Leases of the maisonettes were in substantially identical terms. The only variation being in connection with rights of support of the properties. The differences were immaterial as far as these proceedings are concerned.
7. The leases were made in or about October 1984. The Respondent acquired the properties numbered 1 & 2 Newthorn Place in 2000, then properties numbered 4 & 6 Newthorn Place in 2001 (number 6 Newthorn Place was acquired in the name of the Second Respondent Etadom) and finally he acquired number 3 Newthorn Place in 2007.
8. There was no dispute that the terms of the leases provide for the delivery of services the costs of which are payable by the leaseholders in equal shares. Briefly the relevant terms of the lease are at paragraph 8 4th Schedule (Lessees Covenants)

“To pay the following shares of the monies actually expended by the Lessor from time to time on all or any part of the works matters and obligations specified in the following clauses of the fifth Schedule hereto:

(i – iii) not relevant

(iv) one sixth of the monies expended from time to time under clause 4(c) and 4(d) of the Fifth Schedule hereto; and

(v)

Such shares to be payable on the 25th day of March in each year and recoverable as rent in arrear and if the Lessee shall so require the total amounts of such money shall be certified by the auditor for the time being of the Lessor and such auditor's certificate shall be final and binding on the Lessee and at the Lessor."

9. Clause 11 of the Fourth Schedule provides for Lessor's costs charges and expenses (including legal costs and fees payable to a surveyor) "*which may be incurred by the lessor in connection with the recovery of arrears of rent..... or proceedings or the service of any notice under sections 146 or 147 of the Law of Property Act 1925....*"
10. The relevant clauses of the Fifth Schedule (4(c) and 4(d)) contain covenants by the Lessor to insure and keep insure the development and to pay the reasonable charges of any managing agent employed by the lessor in respect of the development.

The Proceedings

11. On 29 March 2019 the Applicant issued five money claims in the County Court Money Centre for unpaid service charges, landlord's buildings insurance and administration charges. The claims related to each of the five properties owned by Mr Scholes including the property owned by his company Etadom.
12. On 29 April 2019 Mr Scholes filed a defence to all claims denying any liability to pay to the Applicant the sums claimed. Upon filing the defence, the cases were referred to the small claims track and after receiving allocation questionnaires the court referred the matters to the County Court at Chesterfield. Orders were made transferring the cases to the First-tier Tribunal (Property Chamber) for determination and for the claims relating to costs and interest to be resolved pursuant to the deployment project and the guidance given by the Upper Tribunal in *Avon Ground Rents v Child [2018]UKUT 2014 (LC)*.

13. Upon receipt of all claims the Tribunal Judge Jackson gave directions for consolidation and trial of all claims by a judge sitting alone and without need for an inspection of the subject properties.
14. The claims were heard at Chesterfield County Court on 9 October 2019. The Applicant was represented by Mr Jonathan Barham of Counsel. He was accompanied by Mrs Jane Jones an employee of the Applicant. Mr Scholes was unrepresented.
15. Mrs Jones gave evidence on behalf of the Applicant in accordance with her witness statements which had been served before the hearing. Mr Scholes gave evidence on his own behalf in accordance with his defence and witness statements. He was cross examined by Mr Barham.
16. The claims in each of the cases apart from number 6 Newthorn Place, being the property owned by Etadom were as follows:

Details of demand	Date of Demand	Due Date	Amount £
Insurance	25-Feb-17	25-Mar-17	130.22
Insurance	23-Feb-18	25-Mar-18	152.01
Service Charge	25-Nov-16	25-Dec-16	668.03
Service Charge	31-May-17	03-Jul-17	397.4
Service Charge	05-Jul-18	02-Aug-18	254.33
Legal Costs incurred in enforcing terms of lease			520.8
Managing Agents Administration Costs			66
Land Reg Fees			3
Interest			88.25
Total Claimed			2280.04

The claim against Etadom was

Demand	Date of Demand	Due Date	Amount £
Service Charge	05 July 2018	2 August 2018	254.33
Legal costs			390.60

Managing agent administration			66.00
Land Reg fees			3.00
Interest			6.75
Total Claimed			720.68

17. Mrs Jones gave evidence for the Applicant. She described the method used for retaining contractors and the codes applied to purchase orders in order to ensure charges were properly allocated to the development. Mrs Jones also explained inspection arrangements for ensuring development maintenance clearance as and when necessary.
18. Mr Scholes justified the admitted non-payments by asserting a number of alternative propositions. He maintained the service charge invoices were not due for payment on the due date because as rent they could be paid on any 25th March of any year. Alternatively, he had taken responsibility for gardening and maintenance at the development by arrangement with the previous freeholder and consequently no charges for those services should have been incurred. Further and in any event he asserted the charges were unreasonable.
19. In so far as costs were concerned he contended that the terms of settlement of the previous proceedings included a provision that all costs were waived but that his costs could be set off against charges his own legal fees incurred in resisting earlier claims which involved withdrawal of a statutory demand.
20. In answer to questions from Mr Barham he accepted that the earlier proceedings provided no orders as to costs and that therefore his claim for set off failed.
21. Mr Scholes also refused to acknowledge earlier correspondence with the Applicant's solicitor in relation to waiver of a costs claim only related to those earlier proceedings and not the present claims.

22. Although he contended he was actively managing the development Mr Scholes admitted his contractor held no insurance and that therefore there was a risk of public liability claims being uninsured. Mr Scholes was unable to adduce satisfactory evidence that the service charges claimed by the Applicant were unreasonable or unnecessary. Moreover he was unable to sustain his allegation that he was responsible for the active management of the development. He adduced no evidence of an agreement to that effect with either the Applicant or its predecessor in title. In effect he had informally assumed responsibility for some service delivery typically relating to gardening and maintenance. However, he relied on contractors to ensure they had insurance. It was apparent he had not considered public liability issues when arranging occasional engagement by contractors. The only contractor described was 'Jonathan' who tended the gardens and informed Mr Scholes if other work was required.

23. In so far as the claim that audit fees should not have been incurred as they were at the discretion of the lessee, Mr Barham pointed out the lease was drafted before the implementation in Wales of an amendment to s21 Landlord and Tenant Act 1985 which imposed upon the Applicant the obligation to audit charges before submission to the lessee. However, in view of the history of the relationship the Tribunal does not consider it unreasonable to arrange an audit of the charges and the costs involved are reasonable.

The Decision

24. Having heard the evidence and submissions the Tribunal is satisfied the Applicant was delivering responsible management to the development for the benefit of the occupiers of the properties. It is also satisfied the service charges and insurance demands are reasonable and payable.

25. Accordingly, Mr Scholes is liable to the Applicant for the following sums for each of 1,2,3 & 4 Newthorn Place

Insurance	due 25 March 2017	£130.22
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Insurance	due 25 March 2018	£152.01
Service Charge	due 25 December 2016	£668.03
Service Charge	due 03 July 2017	£397.40
Service Charge	due 02 February 2018	£254.33
Total		£1601.99

Etadom liability for unpaid service charge is £254.33

26. In addition the Respondents are responsible for the administration charges incurred by the managing agents in the sum of £66.00 for each property.

Interest on Service Charges and Insurance

27. The Applicant landlord had claimed interest under paragraph 12 of the Fourth Schedule which provides:

“To pay interest at the yearly rate of four per cent above the base lending rate current from time to time of Midland Bank PLC upon all monies payable by the lessee to the lessor under the covenants.... where such monies remain unpaid for more than 14 days after the same became due such interest to be calculated from the date upon which monies became due until the date of payment”

28. The sum claimed for interest pursuant to this paragraph was calculated at the daily rate of 0.14p being £88.20 to the date of issue of the proceedings and a further £27.86 to the date of hearing, a total sum of £116.06 each for the relevant properties.

29. In so far as the claim against Etadom is concerned the claim for interest was at a daily rate of £0.03p being £6.72 to the date of issue and a further £5.97 to the date of the hearing, a total sum of £12.69 in respect of 6 Newthorn Place.

30. The amounts calculated for interest are to be added to the other claims.

Costs

31. The Applicant landlord made a claim for costs on a contractual basis in accordance with paragraph 11 of the Fourth Schedule. The sum for costs set out in the Particulars of Claim was miscalculated and was amended to £502.50 in respect of the claims against Mr Scholes was concerned and £361.80 for the claim against Etadom.
32. In addition the Applicant claimed costs of the proceedings in accordance with a schedule of costs (which had been sent to the tribunal offices and to the leaseholder a week before the final hearing) amounting to £2,773.80 with court fees of £200.00 and an advocates fee of £1500.00 with £854 VAT on both fees. In addition the Applicant claimed witness expense costs of £227.44 travel and overnight accommodation. The total sum claimed for costs after issue of proceedings was £5,556.00.
33. The Applicant's schedule of costs proposes hourly rates of £201.00 for a grade A fee earner. Those rates are not unreasonable but the distribution of work indicates the grade A fee earner was heavily engaged in the conduct of the case. The case was a simple debt collecting matter which did not warrant the time claimed by a grade A fee earner. As stated in *Avon Ground Rents v Child* [2018] UKUT 0204 (LC):
- “The procedure before the FTT is intended to be relatively informal and cost effective. The legal principles for assessing the reasonableness of service charges are well-established and clear. In many cases there will be no issue about the relevant principles to be applied, and their application will not be so difficult as to make legal representation essential or even necessary. In such cases a representative from the landlord's managing agents should be able to deal with the issues involved. After all, those agents will have been directly involved in the decisions taken pursuant to the lease to provide services, to set annual budgets and estimated charges, to incur service charge costs and to serve demands for service charges. Where that is so, a court may reach the conclusion that it was unreasonable for the costs of legal representation to be incurred, whether in whole or in part”*

34. The Applicant relied upon paragraph 11 of the Fourth Schedule and CPR Part 44 r5 in support of the claim and justified the use of a grade A fee earner because of the previous proceedings involving Mr Scholes. Judge Ellis concluded that the landlord had a contractual entitlement to its costs in taking proceedings to recover service charges, costs and interest but it does not entitle the Applicant to indemnity costs. Although the terms of the lease make costs recovery possible the court has a discretion to decide on the reasonableness of the costs claimed (44.5 CPR) which provides

“(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

(a) have been reasonably incurred; and

(b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable”.

35. As far as counsel’s fees are concerned it was reasonable to use counsel without attendance by solicitor in order to reduce the costs of the proceedings but Mr Barham’s fee reflected his seniority. There was no claim for any attendance other than expenses by an employee of the Applicant. However, there is duplication in the claim for pre-action costs. It is unreasonable to claim £502.50 for each of the claims against Mr Scholes. One fee of £502.50 is sufficient as all the claims are in effect the same. There was only one set of correspondence in respect of all claims even though five actions were initiated by the Applicant.

36. Therefor the sums allowed for costs in respect of 1,2,3 & 4 Newthorn Place are:

£502.50 pre action costs

£1850.00 litigation costs

£1500.00 Counsel's fee

£770.50 Vat on fees

£450.00 Court fees (4*£70 issue fee +£170.00 hearing fee)

Total payable for costs is £5073.50.

Costs allowed for 6 Newthorn Place are

£390.60 and £78.12 Vat pre-action costs and £70.00 issue fee but no further costs were claimed for this Respondent.

Appeals

Appeals in respect of decisions made by the FTT

37. 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 (Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

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).

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court

38. An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the Tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court and in respect the decisions made by the FTT

39. You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

Dated 22 October 2019

Judge PJ Ellis
Chair