

12406



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

**Case Reference** : LON/00AM/LSC/2017/0214, 0260,  
0289

**Property** : 28 Upper Clapton Road,  
London E5 8BQ

**Applicant** : Fountayne Managing Ltd

**Representative** : Bude Nathan Iwanier

**Respondents** : Mark Alexander (Flat 1)  
Ewelina Miarka (Flat G)  
Patrick Fahy (Flat H1)

**Type of Application** : Liability to pay service charges

**Tribunal** : Judge Nicol  
Mr JF Barlow FRICS  
Ms L Hart

**Date and Venue of hearing** : 25<sup>th</sup> September 2017  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 25<sup>th</sup> September 2017

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**DECISION**

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1. The Tribunal refused the application made on behalf of the Applicant and the freeholder, IG Richards Ltd, to change the name of the Applicant to that of the freeholder in each of the three cases.
2. All three cases are referred back to the county court.

**The Tribunal's reasons**

1. The Applicant acts as the managing agent on behalf of the freeholder, IG Richards Ltd, of the subject property, a converted pub with 12 flats. The Respondents are the lessees of three of the flats.

2. The Applicant issued the following proceedings in the county court for alleged unpaid ground rents and service charges:
  - On 17<sup>th</sup> March 2017 against the First Respondent in the sum of £4,658.51 (claim no. D8QZ29A6).
  - Against the Second Respondent in the sum of £4,668.20 (claim no. D4QZ896V).
  - Against the Third Respondent in the sum of £4,844.66 (claim no. DoQZ200V).
3. The county court referred each case to this Tribunal although there appears to be no available copies of the transfer orders other than that for the case against the First Respondent. The Tribunal then issued directions for each case. In particular, the Tribunal directed that the three cases be heard together because there were substantial issues common to all of them.
4. On 6<sup>th</sup> September 2017 the Applicant's solicitors wrote to the Tribunal pointing out that the managing agents had been named as the Applicant when it should actually be the freeholder, IG Richards Ltd. They requested that the title of the case be amended accordingly. Judge Dutton referred this request to the hearing already scheduled for 25<sup>th</sup> September 2017.
5. The hearing on 25<sup>th</sup> September 2017 was attended by Mr Jonathan Edwards of counsel, together with Mr Simon Stern of the Applicant, and by the Respondents representing themselves. Mr Edwards renewed the application to amend the title of the case relying on rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013:

**Addition, substitution and removal of parties**

**10.**—(1) The Tribunal may give a direction adding, substituting or removing a person as an applicant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Tribunal to be added or substituted as a party.

6. The parties had prepared for the hearing and were ready to proceed. Of course, it would have been more cost-effective for the Tribunal to hear the substantive case and proceed to a determination but, reluctantly, the Tribunal concluded that it could not do so.
7. There were two problems with the proceedings, common to all three cases:

- (a) Each case had been brought in the name of the managing agents who are not a party to the lease. The Applicant's solicitors were right that they should have been brought in the name of the freeholder, IG Richards Ltd. Their letter of 6<sup>th</sup> September 2017 only purported to be on behalf of the Applicant but Mr Edwards said he was instructed by the freeholder to make his application.
- (b) Each claim form was signed by Mr Stern. Under paragraph 3.1 of the Practice Direction to Part 22 of the Civil Procedure Rules (which govern the procedure in the county court), the statement of truth in a claim form must be signed by the party or their solicitor. Mr Stern is neither. An agent's signature does not comply with the CPR.
8. In the Tribunal's opinion, rule 10 of its own procedural rules do not give it the power to amend the title of county court proceedings so that it does not have the power to substitute the name of the freeholder in place of that of the Applicant.
9. Even if that were not the case, the Tribunal has no power to cure the fact that the claim form has not been correctly signed. Mr Edwards submitted that the county court would be able to cure that problem but the Tribunal is not so sure – the Tribunal's understanding would be that it is a fatal error so that all three cases would be struck out. If the Tribunal had sat as the county court, that is what it would have done.
10. Mr Edwards correctly conceded that all three claims were invalidly constituted. In the Tribunal's opinion, this means that all three referrals from the county court were equally invalid. Even if the Tribunal had the power to substitute party names in a court referral, it could not do so where the transfer is invalid.
11. In the circumstances, the Tribunal has no choice but to refer all three cases back to the county court. Mr Edwards's clients will have the option to renew their application there although it is likely that other options would be quicker and more cost-effective.
12. This decision does not dispose of the substantive dispute. As was said at the hearing, the Tribunal would encourage the parties to try to settle their differences through negotiation in order to ensure the best possible ongoing relationship.

**Name:** NK Nicol

**Date:** 25<sup>th</sup> September 2017