



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY) &  
IN THE COUNTY COURT at Central  
London, sitting at Havant Justice  
Centre Elmleigh Road Havant PO9  
2AL**

**Tribunal reference** : CHI/29UN/LIS/2019/0077

**Court claim number** : F7QZ79K4

**Property** : Flat 2, 11 Ethelbert Terrace, Margate,  
Kent  
CT9 1RX

**Applicant/Claimant** : UK Property Trust Limited

**Representative** : Chandler Harris Solicitors

**Respondent/Defendant** : D & A Real Estate Limited

**Representative** : Real Estate Law Limited

**Tribunal members** : Judge Tildesley OBE

**In the county court** : Judge Tildesley OBE (sitting as a Judge  
of the County Court [District Judge])

**Date of decision** : 3 April 2020

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**DECISION**

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**Summary of the decisions made by the FTT**

The Tribunal determines that

- (i) The charge for insurance in the sum of £574.10 for the 27 October 2013 to 26 October 2014 and the interim services charges in the sums of £2,155.20, £1,973.40, £2,173.64, £2,224.42, and £2,426.20 for the years ending 31 December

2014, 2015, 2016, 2017 and 2019 are reasonable and payable by the Defendant.

- (ii) The Defendant is not liable to pay the administration charges of £20 and £250 dated 27 April 2018 and 26 February 2020 respectively.

### **Summary of the decisions made by the County Court**

- (i) Defendant to pay to the Claimant legal costs of £1,452 including VAT under paragraph 1.2 of The Third Schedule and court fees of £615.21.
- (ii) No order for interest by virtue of section 69(4) County Courts Act 1984.

### **The Proceedings**

1. The Claimant issued proceedings issued against the Defendant on 4 April 2019 in the County Court Business Centre under claim number F7QZ79K4. The Defendant filed a Defence dated 18 April 2019. The proceedings were then transferred to the County Court at Central London and then to this Tribunal by the order of District Judge Woodward dated 1 November 2019.
2. In addition to a claim for unpaid service charges and administration charges the Claimant seeks to recover costs and interest to the issue of proceedings.
3. Although the matters outlined in 3 above are a matter for the Court, as a result of amendments made to the County Courts Act 1984, First-tier Tribunal Judges are now also Judges of the County Court. This means that, in a suitable case, the Tribunal Judge sitting as a County Court Judge can decide issues that would otherwise have to be separately decided in the County Court; and should the Tribunal Judge do so, this might then result in savings in time, costs and resources.
4. The Tribunal took the view that this was a suitable case for the Judge sitting first as a Tribunal Judge and then as a County Court Judge to determine all issues which formed part of the claim no F7QZ79K4.
5. On 26 November 2019 the Tribunal issued directions and a case management hearing was held on 8 January 2020 at which the Defendant did not attend
6. On 8 January 2020 the Tribunal issued a Notice that it was minded to debar the Defendant from taking a further part in the Tribunal proceedings on the ground that by failing to participate in a telephone Case Management Hearing the Defendant had failed to co-operate with the Tribunal. The Notice stated that unless the Defendant made

representations to the contrary by 20 January 2020 it would be debarred from participating further in the Tribunal proceedings. No such representations had been received from the Defendant. Accordingly, on 23 January 2020 the Defendant was debarred from taking further part in the Tribunal proceedings.

7. The Tribunal directed the Claimant to file and serve its statement of case together with all documents in support of the amounts claimed in respect of service charges and administration charges by 13 February 2020 which was extended until 5 March 2020. The Tribunal indicated that it would consider the case and make a paper determination as to the amounts payable, unless it considered that an oral hearing would be required, in which case further directions for an oral hearing would be given.
8. On 23 February 2020 Judge Agnew sitting as a County Court Judge exercising the jurisdiction of a District Judge directed in respect of those aspects of the Claim remaining to be determined in the County Court should be allocated to the Small Claims track.
9. Judge Agnew further directed that a Tribunal Judge sitting as a judge of the County Court would determine the Claimant's claim for costs and interest immediately after the Tribunal has determined the amount of service charges and administration charges payable by the Defendant.
10. The Claimant was directed to file and serve Particulars of Claim by 13 February 2020 setting out precisely the clauses in the lease which it relied on to claim contractual costs and a statement of costs for summary assessment together with an interest calculation. The Claimant was also required to file a witness statement setting out the status of the fee earner, the work done, time taken and hourly rate claimed.
11. The Defendant was given the opportunity to make representations with regard to the costs and or interest claimed which were to be sent by 27 February 2020.
12. Finally Judge Agnew directed that unless either party requested an oral hearing of the application for costs by 7 February 2020 the judge would proceed to assess the costs and determine the interest payable by the Defendant by way of a paper determination on the basis of the written representations. There was no request for a hearing from either party.
13. This decision will act as the reasons for the Tribunal's determination and the reasoned judgment for the County Court

## **The issues & decisions (FTT)**

14. The Tribunal determined the matter on papers. The Tribunal had regard to rule 9(8) of the Tribunal Procedure Rules 2013 which gives it the power to summarily determine any or all issues against a party who has been barred from taking further part in the proceedings.
15. The Claimant is the freeholder and the owner of the building known as 11 Ethelbert Terrace Margate CT9 1RX. The building comprises five residential units.
16. The Defendant holds a long lease of Flat 2 and has been the owner of the Flat since February 2014. The lease is dated 4 August 2004 and made between Clifford Robert Dalton and Pamela Mary Dalton (1), The Ethelbert Management Company Limited (2) and Jeremy Minihane (3). The lease is for a term of 125 years from 1 January 2004 in return of a ground rent of £50 per annum rising eventually to £150 per annum.
17. Under Clause 3 of the Lease the tenant is liable to pay on 1 January of each maintenance year to the landlord the Proportion of the estimated service charge in advance and to pay the Proportion of any service charge adjustment at the end of the maintenance year.
18. The Proportion payable by the Defendant is one fifth of the service charges demanded.
19. The Fourth Schedule to the Lease sets out the mechanism for calculating the service charge. The Fifth Schedule defines the purposes for which the service charge is applied. Essentially the purposes are repair and maintenance of the building, common parts and communal areas, the running and management of the building and insuring the building.

## **Service charges and Administration Charges**

20. The Claimant requested a determination on the following matters:

<b>Date</b>	<b>Charge</b>	<b>Amount (£)</b>
24 October 2013	Insurance 27.10.13 to 26.10.14	574.10
1 January 2014	Interim Service Charge to 31 December 2014	2,155.20
1 January 2015	Interim Service Charge to 31 December 2015	1,973.40
1 January 2016	Interim Service Charge to 31 December 2016	2,173.64
1 January 2017	Interim Service Charge to 31 December 2017	2,224.42
27 April 2018	Arrears admin Fee	20.00
1 January 2019	Interim Service Charge to 31 December 2019	2,426.20
26 February 2019	Administration Fees	250.00

21. The Claimant substantiated its case in respect of the service charges for each year in question by providing in evidence a breakdown of the estimate, a demand (referred to as an invoice), list of property expenditure incurred with supporting invoices and certified accounts for the accounting year ended 31 December.
22. The Claimant did not supply certified accounts for year ended 31 December 2019 because they were not ready in time for the proceedings. Further the Claimant did not raise a demand for the 2018 accounting year because there were sufficient funds in the reserves to fund the services during that year.
23. The Claimant asserted in its statement of case that the Summary of Tenant's Rights and Obligations accompanied the demands.

24. The Defendant in its defence submitted to the Court on 18 April 2019 stated that the Claim related to service charges due for a residential property that are in dispute as excessive and unreasonable and not agreed due to a failure to follow Landlord and Tenant procedures. The Defendant made no further submissions and was subsequently debarred from taking a further part in the proceedings.
25. The Tribunal is concerned with estimated service charges. When examining a budget the Tribunal has regard to section 19(2) of the 1985 act which provides that

“Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charge or otherwise”.
26. The Tribunal considers the correct approach for determining the budgets for the years in question is to assess the reasonableness of the costs at the time the budget is demanded having regard to expenditure in previous years.
27. The Tribunal examined the Claimant’s evidence. The Tribunal observes that the major items of estimated expenditure are insurance, weekly checks of the fire alarm system, repairs and maintenance and management costs. The Tribunal finds that the estimate varied from year to year and bore a relationship with the actual expenditure. The Tribunal identified no items of expenditure that were caught by the requirements to consult under section 20 of the Landlord and Tenant Act 1985. The Defendant made no substantive challenge to the Claimant’s claim for service charges.
28. The Tribunal finds for each year in dispute (1) the charges were authorised by the terms of the lease, (2) the amount of the charges was no greater amount than is reasonable and (3) the charges have been demanded in accordance with the lease and statute.
29. The Tribunal, therefore, decides that the charge for insurance in the sum of £574.10 for the 27 October 2013 to 26 October 2014 and the interim services charges in the sums of £2,155.20, £1,973.40, £2,173.64, £2,224.42, and £2,426.20 for the years ending 31 December 2014, 2015, 2016, 2017 and 2019 are reasonable and payable by the Defendant.
30. The Claimant sought a determination of administration charges of £20 for an arrears administration fee and of £250 for preparing the file for solicitors. The charge of £20 was debited on 27 April 2018 and appeared in the demand dated 25 February 2019. The charge of £250 was debited to the statement of account on 26 February 2020 but did not appear to have been demanded and crystallised as an administration charge. The Tribunal observes that the £250 did not

form part of the Claim for unpaid service and administration charges which was transferred to the Tribunal.

31. The Claimant relied on paragraph 4 of The Fifth Schedule to the lease as the authority for levying the administration charges. The Tribunal notes that The Fifth Schedule deals with those costs the landlord can recover through the service charge. The Fifth Schedule does not provide the necessary authority for the administration charges in question.
32. The Tribunal finds that the Claimant has failed to establish its case in respect of the administration charges. The Claimant has made a mistake in its reliance on Paragraph 4 to The Fifth Schedule. It is not the Tribunal's role to correct the mistake. Further the Claimant adduced no evidence that the charge of £250 was demanded.
33. The Tribunal, therefore, decides that the Defendant is not liable to pay the administration charges of £20 and £250 dated 27 April 2018 and 26 February 2020 respectively.

### **The issues & decisions (County Court)**

#### **Interest**

34. The Claimant claimed interest under s.69 County Courts Act 1984 on the debt of £11,546.96, administration fee of £250 and costs of £624 at the rate of 8% from the period 1 January 2019 to the date of judgment.
35. The Court has approved the Tribunal's determination limiting the Defendant's liability for service charges and administration charges to £11,520.96.
36. Judge Tildesley observes that under Clause 1.1 to the Third Schedule to the Lease. The Claimant landlord is entitled to interest on unpaid service charges at the rate of four per cent above the base lending rate of HSBC bank. The Claimant did not plead contractual interest and, therefore, is not entitled to award of interest under the contract (*Starbev GP Ltd v Interbrew Central European Holdings BV*) [2014 EWHC 2863].
37. Under section 69(4) of the County Courts Act 1984 interest in respect of a debt must not be awarded "for a period during which, for whatever reason, interest on the debt already runs". Thus the Claimant is not entitled to claim statutory interest because of its entitlement to contractual interest.
38. Judge Tildesley sitting alone as a judge of the County Court makes no award of interest.

## Costs

39. The Claimant produced a schedule of costs and a witness statement of Simon Stopher of Chandler Harris LLP, the fee earner responsible for preparation of the case which had been provided in accordance with the Court Directions.
40. The Claimant claimed legal costs of £1,452.50 and court fees of £615.21 (the fees are on the Claim form but not included in the Statement of Costs).
41. The Claimant relied on paragraphs 1.1.2 and 13 of The Third Schedule to the Lease for its authority to recover contractual costs. Judge Tildesley agrees that paragraph 1.1.2 entitles the Claimant to recover its costs in connection with these proceedings.
42. Paragraph 1.1.2 states as follows:

“ To pay to the Company on a full indemnity basis all costs and expenses incurred by the Company or the Company’s solicitors in connection with any proceedings taken against the Lessee to recover the proportion of the Estimated Service Charge or of any Service Charge adjustment or other monies payable by the Lessee under the terms of the lease”.
43. Judge Tildesley finds that the Claimant was the successful party and is entitled to an Order for costs in its favour under section 51 of the Senior Courts Act 1981.
44. Under CPR 44.5 the costs payable under contract are presumed to be reasonably incurred. The Defendant made no representations to rebut the presumption.
45. Accordingly, Judge Tildesley finds that the sums of £1,452.50 and of £615.21 are payable by the Defendant in respect of costs and fees.



## **Appeals in respect of decisions made by the FTT**

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).

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

An application for permission to appeal may be made 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/her capacity as a Judge of the County Court and in respect the decisions made by the FTT**

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.