



**FIRST-TIER TRIBUNAL PROPERTY  
CHAMBER (RESIDENTIAL  
PROPERTY) and IN THE COUNTY  
COURT AT Clerkenwell &  
Shoreditch, sitting at 10 Alfred  
Place, London WC1E 7LR**

**Case reference** : LON/00AM/LSC/2021/0231

**County court claim  
number** : H2DE583Q

**Property** : 24 Brownlow Road,  
London E8 4NR

**Applicant/Claimant** : London Borough of Hackney

**Representative** : Judge & Priestley

**Respondents/Defendants** : Joseph Carlton Magloire  
Daphne Magloire

**Type of application** : Transfer from County Court

**Tribunal members** : Judge Nicol (also sitting as a  
District Judge of the County Court)  
Mr K Ridgeway MRICS

**Hearing Date and Venue** : 5<sup>th</sup> November 2021  
By remote video conference

**Date of decision** : 5<sup>th</sup> November 2021

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**ORDERS AND REASONS**

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**Determination of the Tribunal:**

The Tribunal has no jurisdiction in this matter and it will be remitted to the County Court at Clerkenwell and Shoreditch.

**Order of the county court:**

Upon hearing solicitor's agent for the Claimant,

And upon the Defendants not attending,

And upon the Claimant conceding that the charges claimed are not service charges but estate charges on a freehold house and that, therefore, the Tribunal has no jurisdiction,

IT IS ORDERED THAT:

- (1) The Claimant's oral application for amendment of the Claim Form is refused.
- (2) The Claimant has liberty to renew the said application by Form N244.
- (3) This matter is remitted for administration to the County Court at Clerkenwell and Shoreditch.
- (4) Costs reserved.

### **Reasons**

1. The Claimant issued proceedings in the county court for charges allegedly unpaid by the Respondents in relation to their home at the subject property. Following the transfer of the claim, the Tribunal issued directions on 6<sup>th</sup> July 2021.
2. Unfortunately, the Respondents failed to comply with the directions. A notice was issued on 10<sup>th</sup> September 2021 giving both parties the opportunity to make representations as to whether the Respondents should be debarred. By order dated 5<sup>th</sup> October 2021, the Respondents were debarred from relying on any evidence at the final hearing of this matter due to their failure to deliver a statement of case or respond to the notice of 10<sup>th</sup> September 2021.
3. The hearing took place by remote video conference on 5<sup>th</sup> November 2021. The attendees were:
  - Mr Martin Horne, solicitor's agent for the Claimant; and
  - Mr Olatunbosun Rahim, the Claimant's witness.
4. The Applicant had prepared a bundle of relevant documents, consisting of 83 pages.
5. At the hearing Mr Horne was asked to take instructions on whether there had been any recent communication with the Defendants. He took instructions and explained that the Claimant's case management system showed that their last communication with the Defendants was contained in the bundle. By telephone on 28<sup>th</sup> May 2021 the Claimant discussed with Mrs Magloire a possible settlement of this dispute. Although Mrs Magloire agreed to a payment plan, there has been no further communication from either of the Defendants, despite chasing letters on 1<sup>st</sup> and 7<sup>th</sup> June 2021.

6. The Tribunal and the court were satisfied that the Defendants were aware of the hearing from letters sent to them by the Tribunal in the normal way and could have attended.
7. However, Mr Horne correctly brought to the Tribunal and the court's attention that there was an error in the Claimant's case. The Claim Form states that the claim is for service charges. In fact, the property is a freehold house and, as the Defence pointed out, the charges are estate charges. The Tribunal has no jurisdiction over such charges, despite their functional similarity to service charges.
8. Neither the court nor the Tribunal had picked up on the Claimant's error. The Defendants are clearly not versed in the relevant law and could not reasonably be expected to have understood the jurisdictional issue.
9. This has been compounded by the fact that the debarring order of 5<sup>th</sup> October 2021 was expressly stated to relate only to matters within the Tribunal's jurisdiction. Since there are no such matters, the Defendants are not debarred from defending this claim or from calling evidence.
10. Mr Horne submitted that the claim could proceed on the basis that he would make an oral application for amendment of the Claim Form and Judge Nicol, sitting alone as a District Judge of the County Court, could dispose of the claim.
11. However, although the wording of the amendment to the Claim Form is likely to be short and simple, its effect would be significant. The Defendants would have approached this case on the understanding that the court order transferring the claim to the Tribunal and the Tribunal's debarring order were valid. The amendment has the effect of reversing that understanding.
12. Further, the actual terms of the proposed amendment have not been provided in writing, let alone the Defendants having an opportunity to comment on it.
13. In the circumstances, it would not be appropriate to allow an oral amendment of the Claim Form.
14. This means that the hearing could not go ahead and so the next question was what to do next.
15. It would be disproportionate to strike out the claim, not least because, subject to the proposed amendment, the Claimant appears to have a very strong claim.
16. Therefore, the claim may proceed as a claim within the exclusive jurisdiction of the county court. In those circumstances, it is appropriate that it be remitted back to the County Court at Clerkenwell and Shoreditch. The Claimant may renew their amendment application

there, properly supported by a suitable draft of the proposed amendment.

**Name:** Judge Nicol

**Date:** 5<sup>th</sup> November 2021

### **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).