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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY

Case Reference	:	BIR/00CQ/LIS/2010/0008
Property	:	Priory Place, Fairfax Street, Coventry CV1 5SA
Applicants	:	(1) Ms Sonian Kullar; (2) Priory Place Residents Association and the other Applicants listed on the Schedule to this Order
Representative	:	Ms Sonian Kullar
Respondents	:	Kingsoak Homes Lomited
Representative	:	Mr Charles Bayne-Jardine, solicitor
Type of Application	:	Determination of liability for service charges under s27A Landlord and Tenant Act 1985 and application for order under s20C of the Act
Tribunal Members	:	Judge John de Waal QC, Chairman Mr Stephen Berg, FRICS
Date and Venue of Hearing	:	Birmingham, 13th May 2013
Date of Decision	:	30th July 2013

DECISION ON MATTERS REMITTED BY UPPER TRIBUNAL

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1. By a decision dated 17th January 2013 (neutral citation number [2013] UKUT 015 (LC)), Her Honour Judge Alice Robinson remitted certain matters that we decided on the substantive application (Decision - 6th June 2011) and the s20C application (27th July 2011) back to this Tribunal for review.

2. Having confirmed with the parties that they were both happy for the members who made the original Decisions to hear the remitted matters we gave directions for a hearing which took place on 14th May 2013, with the Applicants again ably represented by Ms Kullar and the Respondent by its solicitor Mr Bayne-Jardine

3. The facts and issues are now well established and set out both in our original Decision and that of Judge Robinson on appeal so we will not repeat them.

Legal fees

4. The first issue remitted to us was the Respondent's claim for legal fees of £10,541.33. The point we made in our Decision is that the relevant invoices had been raised in the name of Barratt Homes West Midlands and not that of the Respondent, Kingsoak Homes Limited.

5. Mr Bayne-Jardine told us that Barratt Homes West Midland is the trading Division of the overall corporate structure that represents the Respondent. We have no reason to doubt that but in order to allow this claim we would need to be satisfied on the evidence that the invoices had been paid by the Respondent and not some other entity, and we were not. Therefore this claim is disallowed.

Section 20 C

6. In his very helpful and detailed skeleton argument which was amplified by oral submissions Mr Bayne-Jardine drew our attention to the decisions in Iperion Investments, Veena SA v Cheong and St John's Wood Leases Ltd which emphasise that the outcome of the proceedings is the most important factor in deciding whether a section 20C application should succeed. He pointed out that his clients had been substantially successful.

7. Ms Kullar for her part pointed out that the Applicants had succeeded on some items in dispute and reminded us of the difficulties she and her fellow tenants had encountered in obtaining information about and from their landlord.

8. The correct starting point for our decision is the observation of Peter Gibson LJ in Iperion Investments v Broadwalk House Residents (1995) 27 HLR 196 (at p13 in the print): *"[t]he obvious circumstance which Parliament must be taken to have had in mind in enacting s.20C is a case where the tenant has been successful in litigation against the landlord and yet the costs of the proceedings are within the service charge recoverable from the tenant."*

9. In this case the Applicants were partially but not wholly successful in their Application in that they obtained a decision which will lead to a reduction or re-assessment of the service charge they have had to pay in respect of the costs of cleaning, management fees, the lift and legal fees. Cleaning and management charges were of course two of the three principal items of service charge which were discussed at the hearing, the third being insurance. It is fair to say that the Applicants did not obtain a reduction in respect of the cost of insurance nor some of the other smaller items.

10. In our view, subject to the caveat set out at paragraph 12 below, we consider that it would be unjust and inequitable to require the tenants to pay all of the landlords' costs of the section 27A application. That is for the following reasons:

    (a) It is apparent to us that the Applicants found it very difficult in the early stages at least to get clear information and relevant disclosure of documents from the Respondent's managing agents. Effectively the Applicants were 'flying blind' for a long time and the true facts and issues only found shape at the hearing.

    (b) The column in the Respondents' Statement of Case as set out in the Scott Schedule 'if wrong, what would be reasonable' was not completed.

    (c) The experts' reports and the experts' Scott Schedule were almost entirely irrelevant to the issues we had to decide, focussing as they did on a different debate which was who was liable for design defects in the building. It would be unfair to make the tenants pay for the landlords' reports as well as their own.

(d) Overall the striking feature of this Application was the fact that despite three preliminary directions hearings and indeed a 'pre-hearing review', it only became apparent that the principal matters which divided the parties (i.e. the plumbing and water ingress) were not in fact relevant to the s27A application as the hearing progressed.

11. We therefore direct that the Applicants' pay 50% of the Respondent's costs of the application.

12. The caveat is this. Returning to Mr Darby's original submission to us, we agree that no order under section 20C should be made in relation to (a) the costs incurred by the Respondent in attending the hearing on 22nd March 2011; (b) the costs incurred by the Respondent in making the written submissions dated 13th May and 24th May 2011; and (c) the costs incurred by the Respondent in preparing the Hearing Bundle.

13. According our decision is that save in respect of the items identified at paragraph 12 above 50% of the Respondent's costs of this Application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants of Priory Place.

14. Any application for permission to appeal to Upper Tribunal (Lands Chamber) against this Decision must be sought from Tribunal within 21 days of date of this decision.

30 JUL 2011
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Date

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Judge John de Waal QC
Chairman, First-tier
Tribunal (Property
Chamber)