



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

Case References : CHI/29UN/LSC/2012/0102
CHI/29UN/LVT/2014/0005

Property : St. Mildreds Court, Beach Road
Westgate-on-Sea, Kent CT8 8AE

**Case (1)
Applicant** : Mr. J.P. Simon

Representative : Unrepresented

Respondent : St. Mildreds Court
Residents Association Limited

Representative : Boys & Maughan, Solicitors

**Case (2)
Applicant** : St. Mildreds Court
Residents Association Limited

Representative : Boys & Maughan, Solicitors

Respondents : The Lessees of St. Mildreds Court

Representative : Unrepresented

Type of Application : Application for permission to appeal and
for a stay of implementation

Tribunal Members : Judge R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM

Date of Decision : 8th January 2015

DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal has considered the request for permission to appeal and for a stay of implementation dated 28th November 2014 received from Mr. Simon (“the Applicant”) and determines that:

- a. It will not review its decision,
- b. Permission is refused and
- c. A stay of implementation is refused.

2. In accordance with Section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

REASONS FOR THE DECISION

3. The Applicant made a claim in the County Court (Case No. 1TT00479) against St. Mildreds Court Residents Association (“the Landlord”). By an order dated 26th June 2012 that claim was referred to the Leasehold Valuation Tribunal. On 1st July 2013 the Leasehold Valuation Tribunal became part of the First Tier Tribunal (Property Chamber).

4. The Applicant is the lessee of 1 St. Mildreds Court, Beach Road, Westgate-on-Sea, Kent CT8 8AE and the Landlord is the freeholder.

5. Some of the matters raised in the County Court claim are beyond the jurisdiction of the Tribunal and this was explained at the Pre-Trial Review held on 28th August 2012.

6. The Landlord made two applications to vary leases at the property. The first was flawed and consequently was dismissed. The second was found by the Tribunal to be in order and the leases were varied.

7. The reason for this decision is that the Tribunal considered and took into account all of the points now raised by the Applicant when reaching its original decision which was based on the evidence before it.

8. The Tribunal has considered the Applicant’s suggestion that there should be a suspension of the original decision in its entirety pending appeal and has treated his application as representations in respect of an application for a stay of implementation. The Tribunal is satisfied that there is no justification for a stay of implementation pending appeal.

9. In reaching the present decision the Tribunal considered the application for permission to appeal and for a stay of implementation and all the documents referred to in the application.

10. The leases in their unvaried form made provision for the calculation of the proportion of service charge payable by each lessee by reference to the Rateable Value of each flat in relation to the Rateable Value of all of the flats contained within the property.

11. While there were Rateable Values for most of the flats at the property, certainly there are not now, and there may never have been, Rateable Values for all the flats. This created a problem in the calculation and collection of service charges. The Landlord is a company formed of almost all the lessees (on the last day of the hearing the Applicant stated that all but 3 of the lessees are shareholders in the Landlord company) and addressed the problem by making decisions that service charges be calculated in ways other than by reference to Rateable Values; the most recent being by reference to Council Tax Bands. This worked for a time but because the service charges were not being calculated and collected in accordance with the terms of the leases there was always the risk that sooner or later a lessee would challenge the legality of the service charge demands. The Applicant made that challenge. It began in the County Court and was, in part, transferred to the Tribunal. He was entitled to make that challenge on the basis of the terms of his lease. Unexpectedly, on the last day of the hearing, the Applicant expressed the possibility that had he been better informed by the Landlord or its managing agents he may have consented to a variation based on Council Tax bands as had been operating.

12. At an earlier hearing the Applicant had stated that the Landlord needed money to do things and that the charges were reasonable. His claim had been on the basis that the Landlord had no right to demand service charges other than in accordance with the terms of the lease. On the last day of the hearing, the Applicant denied that he had made such a statement but it had been noted by the members of the Tribunal and the Case Officer.

13. In order for the property to be managed, including particularly to deal with maintenance and insurance, the leases needed to be varied. The Tribunal considered all the points raised and was satisfied on a balance of probabilities that informed consent to the variation had been given by almost all of the lessees. Out of the 29 lessees, 26 had consented, 2 had not replied and only 1, the Applicant, had objected to it. Indeed at one point in the proceedings, the Applicant submitted that if the leases were to be varied then they should be varied to a greater extent, but that was not part of the application so could not be considered.

14. No application for costs was made on behalf of the Landlord as finality was desired.

15. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by

the Applicant in the application for permission to appeal and for a stay of implementation in the appendix attached.

Judge R. Norman (Chairman)

APPENDIX TO THE DECISION REFUSING PERMISSION TO APPEAL AND
A STAY OF IMPLEMENTATION

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the specific points raised in the application, adopting the paragraph numbering of the original application for permission.

1. The Applicant has submitted that the Tribunal did not have jurisdiction to deal with the service charge issue; that the reference to Section 27 of the Landlord and Tenant Act 1985 (“the Act”) has in some way been prejudicial to him and that the matter should have been returned to the County Court claiming a feared lack of jurisdiction. Section 27A of the Act gives the Tribunal jurisdiction to deal with service charge disputes and the County Court has jurisdiction to transfer such matters to the Tribunal. That is the position in this case and the Tribunal is satisfied that it had jurisdiction to deal with this service charge dispute.
2. The Applicant submits that the second application to vary the leases was flawed and should have been dismissed. The Tribunal was satisfied that the points raised by the Applicant at A1 of his representations (p 153 of the hearing bundle) did not support his submissions that the application to vary the leases was flawed.
3. The Applicant contends that the Tribunal was in error in blocking a refund of service charge claims for the period prior to 10th July 2009. However, the way in which the Tribunal was satisfied that a determination should be made only in respect of the service charges for the period from 10th July 2009 to August 2011 is set out at paragraphs 7 to 16 of the original decision. In addition please refer to paragraph 53 of the original decision.
4. The Applicant seeks an order under Section 20C of the Act. The reasons for not making a Section 20C order are set out in paragraph 57 of the original decision.