FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2015/0242**
Property	:	**23B and 23C Dollis Avenue, London N3 1DA**
Applicant	:	**23 Dollis Avenue (1998) Limited (Landlord)**
Representative	:	**Mr Brynmor Adams of Counsel**
Respondent	:	**Mr N. Vejdani and Mrs N. Echraghi (Leaseholders)**
Representative	:	**Mr Muktia Singh of Counsel**
Type of Application	:	**Section 27A and 20C Landlord & Tenant Act1985, - Service Charges (Court Referral)**
Tribunal Members	:	**Judge Lancelot Robson** **Mr K. M. Cartwright JP FRICS** **Ms S. Wilby**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **10th and 11th September 2015**
Date of Decision	:	**1st October 2015**
Date of Section 20C Decision		**29th October 2015**

DECISION

Decision Summary

(1) The Tribunal decided to make no order under Section 20c of the Landlord and Tenant act 1985.

Preliminary

1. Pursuant to the substantive decision in this case dated 1st October 2015, the parties were given 14 days from the date of publication of the decision to make written representations on the Respondents' Section 20C application if they so wished. The Applicant made no representations. The Respondents made a written submission dated 11th October 2015, settled by Counsel. The Applicant's Counsel also made a written submission dated 15th October 2015.

Submissions

2. The Respondents' submissions are summarised as follows;

a) No amount of the costs had been disclosed

b) the Applicant's costs could have been avoided because;

- i) it had obtained a surveyor's report which had not then been used
- ii) it had obtained legal advice which had also not been used
- iii) it had unreasonably refused to explore resolving the dispute, despite the Respondent's offer letter dated 18th December 2014,
- iv) it had not responded to the Respondent's reasonable concerns over the Section 20 consultation process,
- v) it had unreasonably insisted on using Multicore Ltd as the chosen contractor, and the Tribunal had found against it.
- vi) it had made an allegation of fraud against Mr Yazdani which had poisoned the negotiations

c) the true extent of the Section 20C costs, in an application mainly about major works, but to which the Applicant had added other service charges, and which the Tribunal had found invalidly demanded, as it had failed to produce a certificate in accordance with the Lease

d) the legal fees for those elements of the case in which the Applicant was successful were minimal

e) The Applicant's costs of the counterclaim successfully brought by the Respondents were not recoverable under the terms of the Lease.

3. The Respondents referred to the case of Church Commissioners v Derdabi (unreported) LRX/29/2011 in support of their submission that if a tenant was successful in whole or in part in respect of all or some of the matters in issue it will usually follow that an order should be made under Section 20C.

4. The Applicant submitted that;

a) Legal fees were recoverable under the service charge as the Tribunal had decided.

b) The Tribunal should consider the parties' relevant degrees of success. The Respondents had initially refused to pay any part of the service charges. The Respondent had in fact been successful on only one issue out of nine. Five had been conceded prior to the hearing, and two had been decided in the Applicant's favour. On one element of the Counterclaim it had been agreed that the Tribunal had no jurisdiction, and on the other the Tribunal had endorsed the Applicant's offer. It was conceded that the issue on which the Respondents succeeded was the most financially significant item, the Respondents conduct should debar them from an order, as it was clear from the bundle that the Respondents had information about the proposed contractor at least as early as 15th September 2013, but had not disclosed this information until after proceedings had been issued. This evidence was first disclosed in Mr Maunder-Taylor's report. If the Respondents had participated in the consultation process as they ought to have done, the Applicant could have reconsidered its choice of contractor before incurring the legal costs of these proceedings.

c) The effect of a Section 20C Order would require the other lessees to shoulder the entire burden of the legal fees.

d) If an order was to be made, it should be limited to reflect the limited degree of success and the Respondents' conduct.

Decision

5. The Tribunal considered the evidence and submissions. It was not persuaded by the Respondents' analysis of Derdabi. The facts of that case were rather different to this case. In Derdabi, the LVT and Judge Gerald on appeal had formed an unfavourable impression of the landlord's conduct by (inter alia) failing to supply a readily digestible summary of the service charge items in compliance with the LVT's Directions, resulting in the tenant being disadvantaged in responding to the landlord's case. In this case both parties have taken their responsibilities seriously in preparation for the hearing, and both were represented by Counsel. The Tribunal has a broad discretion in relation to Section 20C (so long, of course, as it exercises its discretion reasonably and considers the facts and circumstances of this case). The Tribunal also notes that both parties (no doubt guided by Counsel) made sensible concessions and agreements at the hearing.

6. The main issues remaining in dispute were the validity of the Section 20 consultation procedure, the reasonableness of the major works demand of £10,200, the balancing charge of £1,042.79 (to the extent of the surveyor's fees and legal fees of the Applicant's previous solicitors), whether the works were within the landlord's covenants under the terms of the Leases, and that part of the Counterclaim relating to the account of C&C Property Services for £1,300 (£500 of which was conceded by the Applicant in its statement of case).

7. The Tribunal has effectively decided that the formalities of the Section 20 procedure were valid, but that the specification and tender process

were unsound. Inevitably, it followed from that finding that the reasonableness of the estimated demand for £10,200 was doubtful. Relating to the balancing charge, the Tribunal decided that it had been invalidly demanded due to the absence of an accounting certificate required by the Leases, but on production of that certificate the whole amount demanded would be reasonable. Within that argument, the Respondents pressed their claim that the legal fees were not permitted by the terms of the Leases but the Tribunal found against them on that point. In relation to that part of the Counterclaim put to the Tribunal, the Tribunal found that a part of the claim was valid, but only to the extent already conceded by the Applicant in its written statement of Reply to the Counterclaim.

8. The Tribunal decided on the Respondent's submissions as follows;

Item a) – the amount of the landlord's legal costs is not a matter for this application. Either party is entitled to make a Section 27A application to determine the reasonableness of those costs in due course.

Item b)(i) – factually incorrect, the Tribunal found in its decision of 1st October 2015 that the survey report was used, although not very well.

Item b)(ii) – The Tribunal found that this submission relating to the legal fees consisted of assertions unsupported by evidence, and it has already decided that those fees were reasonable.

Item b)(iii) – both sides had made offers of settlement at various times, and the letter of 18th December 2014, particularly relied upon by the Respondents, effectively proposed that the Respondents should have a veto on proposed works and that the Respondents' contractors should be used (thus ignoring the Section 20 procedure), which seemed to the Tribunal to be a misconceived suggestion, in view of the possible financial consequences of ignoring Section 20 and the already strained relationship between the parties.

Item b)(iv) – The factual situation surrounding the Section 20 procedure was unusual, and has had to be decided by the Tribunal. However, there were responses by the Applicant, some of which were arguably unsatisfactory

Item b)(v) – The stated preference for Multicore was a valid concern for the Respondents, although it seems that at least one, and probably both Directors were unaware of Multicore's history until the Respondents (who had previous knowledge of that company) pointed it out in a witness statement. The Applicant might argue that the final decision had not been made, but it seemed that without the Respondents' intervention, Multicore would have been instructed. However the Applicant had decided to bring this application, even before the Multicore situation became fully clear.

Item b)(vi) - It was not improper for the connection between C&C and the Respondents to be queried by the Applicant, particularly when the Respondent sought to rely on an invoice effectively issued by Mr Yazdani himself, although that invoice did not reveal the connection. In the end the Applicants apparently accepted the amount of the invoice, and so has the Tribunal. Generally the evidence pointed to a background of strong feelings and words between the parties over various matters, some which are not before this Tribunal. Both parties could be criticised at a personal level on that point, and it should not influence the Tribunal.

Items c) and d) – the Respondents' view was that the Tribunal should wholly disallow the Applicant's costs of this application, or, if not, that the matters on which the Applicant was successful only amounted to 5% of the costs. This submission does not in fact reflect the Tribunal's decision, which effectively demonstrates that both parties were unsuccessful on a number of important points. Further, a mathematical approach does not seem appropriate in considering this case. The appropriate question to ask is what reasonable alternative the Applicant had to making the application in view of the Respondents' opposition to its proposals. "Ploughing on regardless" ran the risk of the Respondents being able to avoiding liability (at least in their position as lessees) for more than £20,000 of work done to the building, or for the work not to be done at all if any of the other lessees would not underwrite the cost.

Item e) – The Tribunal was not persuaded by this submission. If the Lease allows the Applicant to charge appropriate legal fees connected with the management, particularly in this application (and the Respondents have not in fact argued that it does not) it is entitled to reimbursement for the legal costs of defending a claim (including a counterclaim), if it was reasonable to do so. In this case the agreed element of the Respondents' counterclaim within the Tribunal's jurisdiction was £1,300. The Applicant offered £500 to settle that claim in its statement of case, and the Tribunal eventually decided that was the appropriate figure. It cannot be that the Respondents have been completely successful, or that the Applicant was unreasonable in defending that amount of the counterclaim it disputed.

9. Considering the Applicant's submissions, the Tribunal decided:

a)- was accepted

b) - it was broadly accepted that the relative degrees of success were relevant considerations, but not conclusive. As noted in paragraph 10 above, the first question to be asked was whether there was any reasonable alternative to the Applicant commencing proceedings in the light of the information it had available at that time. The Applicant could not have elected to do nothing without breaching its Lease obligations, as both parties have accepted. Doing the work without settling the dispute would have been a high risk strategy. Taking proceedings was the appropriate and sensible course, as is clear from the Decision of 1st October 2015

c) – this submission does not accord with the terms of the Lease, but raised an important point. The Applicant is a management company controlled by the lessees collectively. Legally, the Applicant is a separate legal person from the lessees, and its Directors. It would incur the liability for the costs with no legal right to recover up to half of those costs from the Respondents as lessees. It would then be up to the lessees individually and collectively to decide whether to contribute to its debts, or let it go into liquidation. If the Tribunal makes the order requested by the Respondents, the Applicant will have to cease trading, or make a call on its members (including the Respondents) for funds to cover the shortfall. The Respondents are thus likely to have to contribute half of the shortfall as members of the company, or face abrupt cessation of all

services to the Building, thus depreciating their respective assets. The Respondents would have a Pyrrhic victory.

10. Having considered all these matters, the Tribunal decided that it would make NO order under Section 20C. The Applicant appeared to have commenced proceedings reasonably, and conducted the proceedings before this Tribunal in a reasonable manner. It had had a considerable degree of success. It had made some mistakes, but those appeared to be made in good faith. The Respondents were also not above criticism. They had withheld important information until a very late stage, and their principal offer of settlement was in effect a demand for capitulation. In any event making an order would seem only to add confusion and complexity for no discernible benefit to the parties.

Judge Lancelot Robson Dated: 29th October 2015

Appendix 1

Landlord and Tenant Act 1985 Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2).....

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances.