



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

Case Reference : LON/00AG/LSC/2015/0485

Property : Hillside Court, 409 Finchley Road,
London NW3 6HQ

Applicants : (1) Mr Rothberg - flat 33
(2) Ms Linchis - flats 40 & 41
(3) Mrs Yudkin - flat 51
(4) Mr Kirton - flat 42
(5) Mr Soni - flat 55
(6) Mr Shah - flat 37
(7) Ms Wyse - flat 28

Representative : Mr Rothberg

Respondent : Hillside Court Property Company
Limited

Representative : None

Type of Application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Judge : Mr L Rahman

**Date and venue of
Hearing** : 10/12/15 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 10/12/15

DECISION

Decision of the tribunal

- (1) The tribunal determines the whole application be struck out under Rule 9(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the applicants.

The hearing

2. The matter was listed today for a case management conference. Mr Rothberg appeared on behalf of all the applicants. Also in attendance was Mr Kirton. The respondent was notified of the hearing but did not send any representative on its behalf.
3. Mr Rothberg confirmed the following at the hearing;
4. The relevant property is a purpose built block comprising 60 flats.
5. Four of the applicants (Mr Rothberg, Ms Linchis, Mrs Yudkin, and Ms Wyse) are directors of the respondent company. In total, the respondent has 6 directors.
6. Pursuant to the Fifth Schedule in the lease, the respondent instructed an independent surveyor to recalculate the share to be paid by each flat towards the service charge costs. The proposal was for the 14 largest flats to pay 2.23929% and the remainder of the 46 flats to pay 1.49238%. This would result in Mr Rothberg's service charge contribution being reduced from the 2.72% he is paying at the moment.
7. The above named four directors voted in favour of the proposal and one director voted against. Apparently, the dissenting director was able to argue (rightly or wrongly) that the matter should be put before the shareholders before a decision was taken whether to implement the proposed changes. At an annual general meeting, the majority of the 40 or so shareholders voted against the proposal. Consequently, the proposal was unable to be implemented.
8. The sole purpose of the application to this tribunal was to persuade the tribunal to make an order that the proposed changes to the service charge contribution should be implemented.

9. The tribunal explained to Mr Rothberg that the lease clearly stated the percentages to be paid by each flat, the respondent had discretion to change the percentages paid by each flat so long as it complied with the requirements set out in the Fifth Schedule, due to the internal workings of the respondent company it was unable to implement the proposed changes, and the tribunal did not have jurisdiction to force such a change.
10. Mr Rothberg stated he was of the view that the tribunal could determine whether or not the service charge contribution was fair. The independent surveyor had proposed a fair contribution from each flat, which the tribunal could determine as a fair and reasonable amount to be paid by the applicants.

Findings and reasons

11. The power to change the percentage paid by each flat towards the total service charge costs is at the complete discretion of the respondent. The respondent has decided, rightly or wrongly, not to implement the proposed changes. Until the respondent actually changes the percentage paid by each flat, the existing percentage contributions apply, which were apparently set in 2009. The tribunal does not have jurisdiction to force the respondent to implement the proposed changes. That is a matter for the respondent as the landlord, not for the tribunal to determine.
12. In the circumstances, the tribunal determines it does not have jurisdiction to determine the point in issue and accordingly strikes out the whole case under paragraph 9(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Mr L Rahman

Date: 10/12/15