



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00MS/LSC/2020/0051

Property : Hawkins Tower & Moresby Tower, Admirals Quay,
Ocean Way, Southampton SO14 3LH

Applicants : Chris Richardson, David Roath & other
leaseholders

Representative : ---

Respondent: Brigante Properties Limited

Representatives : J B Leitch Solicitors

Type of Application: Costs determination - Section 20C of the Landlord
and Tenant Act 1985 (“the 1985 Act”), and
Paragraph 5A of Schedule 11 of the Commonhold
and Leasehold Reform Act 2002 (“the 2002 Act”)

Tribunal Members : Judge P J Barber
Mr J Reichel BSc, MRICS

Date of decision: 14 December 2020

DECISION

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Decision

- (1) The Tribunal determines pursuant to Section 20C of the 1985 Act, that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the Applicant tenants as listed on Page 44 of the hearing bundle.
- (2) The Tribunal makes an order under Paragraph 5A of Schedule 11 of the 2002 Act, to extinguish any liability in respect of the Respondent`s litigation costs in these proceedings as administration charges, on the part of any of the Applicant tenants as listed on Page 44 of the hearing bundle.

Reasons

INTRODUCTION

1. An application made by Mr Richardson and Mr Roath as lead applicants for a total of 84 lessees at Moresby Tower and Hawkins Tower, pursuant to Section 27A of the 1985 Act, was determined by a decision dated 6 October 2020, and in which the Tribunal directed the parties within 35 days to submit written representations to each other and to the Tribunal, in regard to the Applicants` claims for costs pursuant both to Section 20C of the 1985 Act, and Paragraph 5A of Schedule 11 of the 2002 Act. The Tribunal directed that it would make a determination on costs on the papers, unless either party objected, as soon as practicable following receipt of such written representations.
2. No such objections have been made and accordingly, the matter is being determined on the papers.

INSPECTION

3. Due to the Covid pandemic, no inspection of the Property took place.

THE LAW

4. Section 20C Landlord and Tenant Act 1985

20(C) (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 the ... First-tier 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 the application is made may make such order on the application as it considers just and equitable in the circumstances.

5. Paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002:-
5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant`s liability to pay a particular administration charge in respect of litigation costs.
(2)The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
(3) In this paragraph-
(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings

.....

REPRESENTATIONS

6. The Applicants provided written submissions dated 20 October 2020 as prepared by their counsel, Ms Katie Gray, in which she broadly said that the Applicants do not admit that there is any provision in the leases that permits the Respondent to recover its legal costs in these proceedings through the service charge, and inviting the Tribunal to hold that if such costs would be recoverable through the service charges, they are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
7. In regard to Section 20C, Ms Gray broadly submitted that the Tribunal must have regard to what is just and equitable in all the circumstances, referring to the decisions in *Schilling v Canary Riverside LRX/26/2005* and *Church Commissioners v Dardabi [2010] UKUT 380 (LC)* in relation to the issue of proportionality, and referring to the significant amounts which had been in dispute in this matter under Section 27A, adding that the Applicants had been wholly successful in that application. In regard to the conduct of the Respondent, Ms Gray commented that it had progressed matters slowly, given uncertain evidence, and made no allowance for possibly successful warranty or other claims. Ms Gray indicated that had the Respondent considered such matters promptly before seeking to pass on the costs, there might have been no need for the application. Ms Gray said that the Applicants had given the Respondent every opportunity to resolve the matter before they resorted to issuing their Section 27A application, and highlighted certain correspondence. Ms Gray indicated that in the circumstances it could not be just and equitable for the Respondent to be able to recover the costs of dealing with the application through the service charge.
8. In regard to Paragraph 5A, Ms Gray submitted that there appeared not to be any provision in the leases that would entitle the Respondent to recover their costs of these proceedings as an administration charge, although she commented that

the Respondent had failed to confirm whether or not it may seek to recover such administration charges in these proceedings. For similar reasons as in the preceding paragraph, Ms Gray submitted that any liability under Paragraph 5A ought to be extinguished.

CONSIDERATION

9. The Tribunal, have taken into account the written submissions made by Ms Gray and notes that the Respondent had chosen, notwithstanding the directions, not to make any representations in regard to costs.
10. In regard to Section 20C, the Tribunal notes the reference made by Ms Gray to the Applicants having been wholly successful and takes into account the substantial amounts which had been claimed by the Respondent by way of advance service charges and the fact that the Respondent has chosen not to make any submissions or pursue any challenge regarding such costs. Accordingly, and in such circumstances, the Tribunal determines that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the Applicants as listed on Page 44 of the hearing bundle.
11. In regard to Paragraph 5A, the Tribunal notes the suggestion made by Ms Gray that there is no provision in the leases permitting the Respondent to recover legal costs either through the service charge, or as administration charges, and that the Respondent has made no further contrary submissions, or otherwise challenged this point. Accordingly, and for the avoidance of any doubt, an order is now made by the Tribunal under Paragraph 5A to extinguish liability, if any, on the part of the Applicant tenants in respect of the Respondent`s litigation costs in these proceedings, as administration costs.
12. We made our decisions accordingly.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case, by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.