UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges- costs- section 20C, Landlord and Tenant Act 1985- jurisdiction to make an order in favour of tenants where no consent or authority to make application has been given by those tenants- appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

PLANTATION WHARF MANAGEMENT LIMITED — **Appellant**

and

BLAIN ALDEN FAIRMAN AND OTHERS — **Respondents**

Re: Calico House and Ivory House,
Plantation Wharf,
York Road,
London,
SW11 3TN

His Honour Judge Stuart Bridge

Royal Courts of Justice

25 June 2019

Justin Bates of counsel for the appellant
Mr Fergus Low and Mr Peter Donebauer, in person, for the respondents

The following cases are referred to in this decision:

Fairman v Cinnamon (Plantation Wharf) Ltd [2018] UKUT 421 (LC)

Re Scmlla (Freehold) Ltd [2014] UKUT 58 (LC)

Volosinovici v Corvan (Properties) Ltd, LRX/67/2006, [2007] EWLands LRX_67_2006 &

Conway v Jam Factory Freehold Ltd [2013] UKUT 592 (LC)

Rotenberg v Point West GR Ltd [2019] UKUT 68 (LC)

Introduction

1. This appeal concerns a small but important question relating to the jurisdiction of courts and tribunals to make orders pursuant to section 20C of the Landlord and Tenant Act 1985 (hereafter "section 20C"). Can a court or tribunal make an order under section 20C in favour of a person who has neither made an application under that provision themselves nor given authority to another to make application on their behalf?

2. The question arises in an appeal from a decision of the First-tier Tribunal (hereafter "FTT") made on 10 May 2018 in proceedings between Cinnamon (Plantation Wharf) Ltd (hereafter "Cinnamon"), Plantation Wharf Management Ltd (hereafter "PWML"), and Cube Real Estate Developments Ltd on the one part and various lessees of two blocks on the Plantation Wharf Estate on the other. The FTT made an order in the course of those proceedings under section 20C on the ground that it did not consider it just and equitable for the costs of the tribunal proceedings to be claimed as part of the service charge.

3. Section 20C provides, so far as is material:

> "(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… 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) The application shall be made-…
> (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;…
>
> "(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."

4. Plantation Wharf is a substantial mixed-use development situated in York Road London SW11 3TN on the south bank of the River Thames between Battersea and Wandsworth Bridges. It comprises 13 blocks of residential and commercial units, each block having a different name. The predecessor in title of the current landlord Cinnamon granted long leases of the residential units in common form, to which leases the appellant management company PWML was also a party. The two blocks central to the proceedings, Ivory House and Calico House, initially comprised residential units on the upper floors and commercial units on the lower floors. Although all units were required to contribute to the service charge, a greater ratio was payable by the commercial units. The blocks were redeveloped so as to become more predominantly residential, as a result of which there was a re-apportionment of the service charges conducted by the landlord, as permitted by the terms of the leases.

5. The re-apportionment exercise was challenged by various lessees in proceedings before the FTT, following which there was an appeal to the Upper Tribunal. Having made its determination on the merits, the FTT then heard applications for section 20C orders by two lessees, and it is one of those orders made by the FTT that is now under appeal. This Tribunal, when it decided (and dismissed) the substantive appeal on 8 January 2019, held that it was neither unjust nor inequitable for the costs of the appeal to be recovered through the service charge: see *Fairman v Cinnamon (Plantation Wharf) Ltd* [2018] UKUT 0421 (LC) at [73]. No section 20C order was therefore made by the Tribunal in relation to the costs of the appeal.

6. The Tribunal directed that the service charges payable should be re-calculated by the FTT, in the event of no agreement being reached by the parties. I was informed at the hearing of the current appeal that the hearing of that matter by the FTT was due to take place on the following day.

The section 20C proceedings

7. In the section 20C proceedings before the FTT, there were two active respondents, both of whom appeared before me at the hearing of the appeal: Mr Fergus Low, a leaseholder in Ivory House, who acted on his own behalf before the FTT; and Mr Peter Donebauer, who acted on his own behalf and also for a number of other leaseholders who had given him written authority to do so.

8. At the conclusion of the FTT proceedings, Mr Donebauer made a successful application for a section 20C order on behalf of himself and several other leaseholders. Mr Donebauer's application had stated the names and addresses of those leaseholders, and they are recorded in a Schedule to this decision. No appeal has been made against this section 20C order.

9. A section 20C order was also made in favour of Mr Low. Insofar as the order relates to Mr Low himself, there is no challenge or appeal. The appeal relates to the fact that on application by Mr Low the FTT made an order purporting to cover all the residential leaseholders residing within the entire development of Plantation Wharf. The circumstances in which that order came to be made are as follows.

10. Mr Low made his application on the standard form "Leasehold 7". Having set out his personal details (name, address, telephone number and email address) in Section 1 of the form, he then completed Section 2, which is headed "Other Affected Persons". The form asks, *"Are you seeking an order that is also for the benefit of any other person or persons? (e.g. other tenants in the same block or development)"* to which question Mr Low ticked the "Yes" box.

11. The form continues, *"If Yes, please specify and provide the names and addresses of those persons (if available). If this is not possible or is impractical, then a written statement to that effect should be provided with this application."* In the small box provided for the response, Mr Low wrote "ALL LEASEHOLDERS AT PLANTATION WHARF YORK ROAD LONDON SW11 3TN. I DO NOT HAVE DETAILS OF ALL NAMES AND ADDRESSES." He did not provide any other "written statement".

12. Mr Low completed the remainder of the form, stating the address of the subject property (he gave Plantation Wharf, with the same address as previously) and giving a "brief description of property" as required: "MIXED USE DEVELOPMENT COMPRISING AROUND 230 APARTMENTS, OFFICES AND OTHER UNITS IN A NUMBER OF SEPARATE BLOCKS." He gave the details of the landlord (Cinnamon) and details of other applications made involving the same landlord or property, stated he would be content with a paper determination, gave the dates he would not be available, and signed the form (dating it 20 March 2018) together with the statement of truth.

13. On 10 May 2018 the FTT made an order under section 20C, emphasising that it had a wide discretion to exercise having regard to all the circumstances of the case, and concluding that it

was not just and equitable for the costs of the proceedings to be claimed as part of the service charge. In doing so, it appeared to make no distinction between Mr Donebauer and Mr Low although it did not expressly delineate the extent of the order it was making.

14. On 19 June 2018 the FTT considered, and refused, an application by the current appellant (the management company) for permission to appeal its section 20C order, stating that it was not satisfied that there was a real prospect of establishing that it had erred in the exercise of its discretion.

15. Permission to appeal was then sought from the Upper Tribunal. Although, on 13 August 2018, the Tribunal refused permission, the Deputy President made an important observation which led to a reference back to the FTT:

> "It is not clear from the FTT's decision whether it considered that it was making an order under section 20C in favour of all lessees, or only those lessees who were party to the proceedings. The FTT should be asked to clarify the scope of its decision to avoid any future doubt. The only lessees entitled to the benefit of the decision are those on whose behalf the application was made."

16. This was an important issue going to the merits (as the Tribunal went on to explain) as if it were only those who were party to the proceedings who could benefit from the order, the landlord would not be precluded from seeking to recover its costs of the proceedings from those lessees who were not parties. In those circumstances, the possibility would remain of the landlord being recompensed for its outlay on legal costs (on the assumption that the leases of the non-parties contained an appropriate recoupment clause), and it was unlikely that (as the applicant had contended) the shortfall in service charge recoverable from the lessees would lead to the applicant management company's insolvency.

17. The response from the FTT to the Upper Tribunal's request for clarification came in the form of an email dated 30 August 2018. It stated:

> "The lessees entitled to the benefit of the Tribunal's order pursuant to section 20C of the Landlord and Tenant Act 1985 are those on whose behalf the application was made."

18. The FTT response continued by reciting the manner in which Mr Low had completed his application form (on which see paragraphs [10] and [11] above), and concluded by confirming "that the application was made on behalf of all lessees and all lessees have the benefit of the Tribunal's order".

19. In light of that response, a further application for permission to appeal was made by PWML to the FTT and it was refused on 26 September 2018, the FTT commenting (correctly, as the appellant concedes) that the argument that was now being made had not been originally advanced in response to Mr Low's application dated 20 March 2018.

20. Finally, on 23 November 2018, permission to appeal was granted by this Tribunal which commented:

> "The circumstances in which a party to the proceedings before the FTT may apply under section 20C… for an order protecting others (a) who are not parties, and (b) who have

not given the applicant authority to make an application on their behalf, from liability to contribute towards a landlord's costs of the proceedings through a service charge is an issue of general significance which merits consideration by the Tribunal. The proposed appeal has a realistic prospect of success for the reasons advanced in the draft grounds of appeal."

The case for the appellant

21. Mr Bates, on behalf of the appellant company, contends that a section 20C order can only be made on behalf of an applicant acting in person or an applicant acting through their authorised representative, and that the FTT has no power to make an order in favour of a third party who has neither applied for the order personally nor authorised another person to apply on their behalf. Mr Bates accepts that the provision contemplates application being made on behalf of such a third party, provided that that person is specified in the application. However, the person who is specified must have consented or otherwise authorised the tenant to make the application on their behalf.

22. Mr Bates develops this submission with reference to rule 14 of the First-tier Tribunal Procedure Rules (SI 2013/1169) which carefully prescribes the circumstances in which a person may be represented by another in the course of FTT proceedings. He notes that the effect of that rule is that a layman (such as Mr Low) may not act on behalf of a third party and therefore may not make an application on their behalf unless the third party has notified the Tribunal that they wish to be so represented. In the current case, no such notification was given, and a number of leaseholders (three in number, all of whom are apparently directors of the appellant company) had written to the appellant (and the Tribunal) confirming that they had not authorised Mr Low to act on their behalf and indicating that they did not wish him to have done so. In the circumstances, the application made by Mr Low on behalf of other persons was made without authority and the FTT had no jurisdiction to make the order purporting to protect all the lessees in Plantation Wharf from being liable to pay the costs of the FTT proceedings through their service charge.

23. Mr Bates submitted that section 20C orders were potentially ruinous for lessee-owned companies, as a result of which it was not surprising that members or directors would be minded to oppose, or at least not support, the making of such an order, even where there might otherwise be grounds for one being made. He further submitted, accepting that he did so without any support from the facts of this case, that there may be an agreement or estoppel which would prevent a particular leaseholder from seeking a section 20C order. In short, the FTT was wrong to make an order from which all other leaseholders in the development were entitled to benefit: despite the reference to all the other leaseholders in Mr Low's application, the application could only relate to him, and the order made could therefore only relate to him.

The case for the respondents

24. Mr Low has wider concerns than the immediate issue before the Tribunal, in particular the extent to which the landlord has control, through its shareholdings, of the management company, and it is evident that there is currently a degree of dissatisfaction amongst leaseholders with the manner in which the estate is being managed, although it is difficult, and unnecessary for the purposes of resolution of this appeal, to assess its true extent.

25. Mr Low succinctly summarised the principal basis of his opposition to the landlord's appeal as follows. He had completed the form of application making it crystal clear that he was seeking to prevent the appellant company from charging the costs of the proceedings to any of its leaseholders on the estate. In his view, the form allowed for such an application to be made, as it contemplates that it might not be "possible", or it might be "impractical", for the applicant to contact all those on whose behalf it wished to seek an order. He had provided a "written statement" (albeit comprising one sentence), as the form itself required, to the effect that he did not have details of all the leaseholders' names and addresses. Mr Low accepted that he did not have the express consent or authority of all the leaseholders on the estate, and that three leaseholders had stated that they would not give consent or authority, but he explained that his application had been widely discussed at a leaseholders' meeting and he contended that he had completed the form properly in accordance with the instructions given.

26. Mr Low pointed out that neither PWML (the appellant management company) nor Cinnamon (the landlord) had responded to the application by challenging his authority to seek a section 20C order on behalf of all residential leaseholders on the estate. On the contrary, while there had been an objection on the merits, the jurisdictional point based on a supposed lack of consent or authority was never mentioned by the appellant until the Tribunal, through its Deputy President, raised it when refusing permission to appeal. The decision of the FTT to make section 20C orders in favour of all leaseholders was a just and equitable one properly made in the exercise of its discretion.

27. Mr Donebauer adopted Mr Low's submissions but added one further submission the resolution of which is in my judgment central to this appeal. He emphasised that section 20C does not expressly require the person or persons "specified" by the applicant tenant to have given their consent or authority to the tenant acting on their behalf. He contends that, had Parliament intended consent or authority to be a pre-condition, then Parliament could and should have said so in the legislation.

28. It must be said at the outset that the argument advanced by the appellant requires the Tribunal to imply words into section 20C which are not there: that a person who is "specified in the application" must have given consent or authority to be so specified, and that in the absence of such consent or authority being made section 20C does not provide a shield for that person. The question is therefore whether the Tribunal should read words to that effect into the legislation.

Discussion

Introduction

29. Service charges are sums payable by the tenant on account of costs incurred by the landlord in carrying out repairs, providing insurance or performing services in relation to the demised premises. They are variable, being almost universally calculated by reference to the actual cost of the services provided, and the extent of the tenant's liability is a matter of interpretation of the service charge clause contained in the tenant's lease.

30. Service charges payable in respect of residential property are subject to the statutory regulation of the Landlord and Tenant Act 1985, the scope of its regulation having been expanded by subsequent amendment. Section 20C is only one aspect of that regulation. Most notably, section 19 of the 1985 Act operates to limit the amount payable under a service charge

to those costs that are reasonably incurred, providing in addition that costs incurred for services or works can only be taken into account if the services or works are of a reasonable standard. If an application for a section 20C order is refused, it does not follow that the entire costs of the proceedings will be recoverable by the landlord pursuant to the service charge: it will depend first upon the true interpretation of the service charge clause (and whether the costs claimed are within its scope) and secondly upon the reasonableness of the demand being made (that is whether the costs being claimed have been reasonably incurred).

31. In general terms, what section 20C does is provide a tenant with an opportunity to apply to the FTT for an order that the costs of proceedings incurred by the landlord are to be disregarded when the service charge is calculated: on the assumption that the service charge clause would otherwise permit their recovery, they are not to be recovered from that tenant by way of service charge. The costs in question may typically be legal costs (that is fees payable by the landlord to solicitors or counsel for the preparation and conduct of the litigation), or costs incurred in instructing surveyors or other professionals. While those are the costs most usually subject to a section 20C order, the wording of the statute is wider, referring to costs incurred "in connection with" proceedings.

32. There is no time limit stipulated in the statute for an application to be made, and the fact that a section 20C(3) order has been made (or refused) by one tenant in connection with proceedings before a tribunal is no bar to another tenant in the same building making a similar application subsequently.

33. There is no jurisdiction to make an order outside the statutory regime, and it is therefore important to recognise its limitations. Section 20C(3), in stating that the tribunal to which the application is made may make such order as it considers just and equitable in the circumstances, confers a wide discretion. However, that provision, by its express reference to the application, underlines the essential point that in the absence of an application there is no power vested in the tribunal to make an order at all.

34. Section 20C(1) imposes an important qualification on applications the interpretation of which is critical to the resolution of the issue in this case. It makes clear that a section 20C application is to be made by a tenant and that the application must relate to the amount of any service charge "payable by the tenant or any other person or persons specified in the application." The order, if and when it is made, will restrict the recovery of service charge from the tenant and/or from any other person(s) so specified. It will have no such effect in relation to any other persons (such as tenants in the same block or building as the tenant who has made the application).

Decisions of the Tribunal

35. In *Re Scmlla (Freehold) Ltd* [2014] UKUT 0058 (LC), an application was made, in terms somewhat similar to those invoked by Mr Low, to a leasehold valuation tribunal (hereafter "LVT"), the precursor of the FTT, by a tenant of a block known as Cleveland Mansions. In answer to the question at paragraph 2 of the standard application form (see para [10] above), the tenant stated, "All tenants of SCMLLA (Freehold) Limited on Widely Road, in particular tenants in block 1-10 & 31-40 Cleveland Mansions." The Tribunal did not have to decide whether such an application, if successful, would result in a section 20C order in favour of all the tenants referred to generically in these terms. This was because the Tribunal was not satisfied

that the respondent landlord had been served with a copy of the application and directed that the order be set aside insofar as it related to persons other than the applicant tenant himself.

36. In *Re Scmlla*, the Tribunal, having considered two of its previous decisions, concluded that the jurisdiction to make a section 20C order was limited by the terms of the application that had been made and that the scope of the order was confined to the applicant tenant and any other person(s) specified in the application. The first of these decisions was that of the Lands Tribunal (HH Judge Huskinson) in *Volosinovici v Corvan (Properties) Ltd*, LRX/67/2006, [2007] EWLands LRX_67_2006 & (Supplemental decision); the second that of the Tribunal in *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592 (LC) where the Deputy President said at [71]:

> "On an application made by a tenant under section 20C the benefit of any order made extends only to "the tenant or any other person or persons specified in the application." The application in this case was made by the appellants… but no other tenant was specified in the application either expressly or implicitly as being an intended beneficiary. The order does not state to whom it is intended to apply. No formal order appears to have been drawn up and the decision itself says only that "the applicant's application under section 20C is allowed." In those circumstances no person other than the applicants themselves is entitled to the benefit of the order."

37. As the Deputy President observed in *Re Scmlla (Freehold) Ltd* at [23], he had, in *Conway v Jam Factory Freehold Ltd*, "reached the clear conclusion that an order under section 20C could only be made in favour of a tenant or other person specified (whether by name or otherwise) in an application made by a tenant." The Tribunal continued as follows:

> "[24] It would be surprising, in my view, if a power was conferred on the LVT to relieve parties of their contractual obligation to contribute to costs incurred by their landlord, which would otherwise be recoverable through the service charge, in circumstances where no interested party requested such an order. There would additionally be a serious risk of unfairness if the LVT had jurisdiction to make an order in very much wider terms that the order which it was asked to make and of which the respondent to the application has been given notice. The consequences of an order under section 20C can be extremely serious, particularly in the case of order made against companies whose only asset is the freehold interest in a building entirely let on long leases at a ground rent, as in the *Jam Factory* case and as, from the acronym which makes the appellant's name, I infer is the case in this appeal…
>
> "[25] I am satisfied that, as one would normally expect in civil proceedings, the scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order. Although the LVT (and now the FTT) has a wide jurisdiction to make such order as it considers just and equitable in the circumstances, it does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else."

38. These decisions reinforce the point that the jurisdiction under section 20C is derived from, and driven by, the application and that any order which is made reflects not only the terms of the application but also the identities of the applicant tenant and any persons who may be specified in the application. However, none of these decisions address directly the issue which arises in this case: whether it is open to the applicant tenant to specify persons (either by name or by describing a particular class of individuals) who have not given their consent to being so specified and whether, if that is done, the section 20C order can be made in favour of those persons.

The FTT Procedure Rules

39. Mr Bates referred the Tribunal to rule 14 of the First-tier Tribunal Procedure Rules (SI 2013/1169) (hereafter "the Rules"). As I indicated to him at the time, I have reservations in placing significant reliance upon the Rules as such. I do not consider that it is legitimate to construe primary legislation by reference to secondary legislation, even where (as is usual) the secondary legislation has been implemented by statutory instrument to give effect to the policy objectives of the primary legislation. Nor does the prescribed form of application itself assist, as in my judgment it is not proper to have recourse, in the process of interpretation of the primary legislation, to the prescribed form although it was first published some years ago and has been used without apparent difficulty ever since.

40. That said, the point being made by Mr Bates with reference to the Rules is an important one. It concerns the status within the proceedings of a person who is not the tenant making the application but who has been "specified" by an applicant tenant as someone who could and should benefit from a section 20C order. Is such a person an "applicant" (and therefore a party to the proceedings) or nothing more than an intended beneficiary of the exercise of judicial discretion in his or her favour?

41. Rule 14 is titled "Representatives". It reads, so far as is material, as follows:

> "(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings.
>
> "(2) If a party appoints a representative, that party must send or deliver to the Tribunal and to each other party written notice of the representative's name and address."

42. "Party" is defined in the Rules as "a person who is, or if the proceedings have been concluded, a person who was, an applicant or respondent when the Tribunal finally disposed of all issues in the proceedings." In turn, "applicant" means (again so far as material to this case) "(a) the person who commences Tribunal proceedings, whether by making an appeal, an application, an objection or otherwise" or "(e) a person who is added or substituted as an applicant under rule 10"; and "respondent" means "(a) in an appeal against a decision, direction or order, the person who made the decision, direction or order appealed against" or (as here) "(b) a person against whom an applicant otherwise brings proceedings".

43. Rule 14 goes on to distinguish between representatives who are authorised under the Legal Services Act 2007 (such as solicitors and counsel) and those representatives who are not. The former may give notice of acting to the Tribunal under rule 14(2), whereas the latter may not. As explained by the Tribunal in *Rotenberg v Point West GR Ltd* [2019] UKUT 68 (LC) at [37]:

> "Where a party wishes to be represented by someone who is not authorised to exercise a right of audience or to conduct litigation the party must themselves notify the tribunal and each other party of the representative's appointment (rule 14(3)(b). The justification for that distinction is not difficult to understand. The tribunal trusts a representation made by a solicitor or barrister as to their appointment because of their regulated professional status, backed by the disciplinary rules and sanctions available in the event that the expected professional standards are not met."

44. Mr Bates makes the point that a layman (such as Mr Low) may not act on behalf of a third party (and may not therefore make an application on their behalf) unless that third party has

notified the Tribunal that they wish to be represented by the layman. In the present case, no such notification was provided by the leaseholders of Plantation Wharf whom Mr Low was purporting to represent. Indeed, some leaseholders (Mr Bates referred to three such who had provided statements) had written to the appellant company (and to the Tribunal) to confirm that they had not authorised Mr Low to act on their behalf and that they opposed the manner of his application.

45. Underlying this dispute is the question whether an application can be made by a tenant for an order benefiting a class of tenants (such as the current tenants of a particular block), or whether it is necessary for the application to "specify" tenants individually (although it may be that some or all tenants are corporate bodies rather than actual individuals). Such "class" applications have been made: *Rotenberg v Point West GR Ltd* (above) is a recent example where members of a leaseholders' association were represented by a firm of solicitors. In that case, the Tribunal criticised the FTT for directing the firm to provide a list of the leaseholders whom it was claiming to represent verified by those clients (see at [69]) because the effect of rule 14 was that, once the solicitors' firm had given notice to the FTT and the landlord that it was representing a party, it was unnecessary for any further assurance to be given. A section 20C order was made, by the Tribunal, declaring that costs incurred by the respondent landlord in the FTT proceedings were not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by any of the leaseholders represented by the solicitors' firm (and whose name appeared on the list provided to the FTT: in the event of a flat changing hands after the date of the list, the successor in title would be protected).

46. In *Rotenberg*, however, it was not in issue whether the leaseholders who benefited from the section 20C order had authorised the solicitors' firm to act on their behalf. Each of those leaseholders was an "applicant" and it was clearly within the scope of the Tribunal's jurisdiction to make section 20C orders in their favour. Moreover, the relationship between the leaseholder and their solicitor was crucial.

47. In this case, Mr Low is not a solicitor. Nor was he representing the entirety of the leaseholders of Plantation Wharf. In order for him to "represent" another leaseholder in FTT proceedings, that leaseholder would have to send or deliver to the FTT and to each other party written notice of Mr Low's name and address: TP(FTT)(PC)R 2013, rule 14(2). That was not done.

48. When rule 14 is considered, it is clear that it is dealing with the parties to the application, the "applicant" and the "respondent". Where the leaseholder is an applicant, rule 14 must be satisfied. But it is not clear whether a leaseholder who, having been "specified" by another tenant in making a section 20C application as an intended "beneficiary" of a section 20C order, would thereby become a "party" to the proceedings. If that were the case, rule 14 would then apply. It seems that, in order to ensure that there is the appropriate degree of control by the Tribunal (or for that matter, the court), a person who has been "specified" should be treated for all practical purposes as an applicant. Whether that is currently achieved by rule 14 is a moot point, and one that does not have to be decided in order to determine this appeal.

Conclusion

49. A section 20C order in favour of all the residential lessees on an estate has serious consequences for any landlord (or management company). In allowing Mr Low's application in

this case, the FTT denied the landlord or the management company the opportunity to recover their costs of the proceedings by levying service charges from any of the tenants of the estate. Such an order comprises a significant interference with the landlord's contractual rights.

50. It may be argued, on the particular facts of a case, that the conduct of the landlord in relation to the proceedings has been such that justice demands that the landlord be denied the right to recover any of its costs from any of its tenants. The question is: if the tenants satisfy the FTT that the landlord's conduct has fallen so far short of the mark, should not then the FTT have power to impose such a sanction?

51. The appellant concedes that the FTT does have that power, but only where all the tenants have made an application, or where, having given their consent or authority to other tenants who have applied, they are "specified" in the application. Where no such consent or authority has been forthcoming, the making of a section 20C order would not only be punitive, it would be made without the FTT having the jurisdiction to do so.

52. I agree with the appellant that there is a need for caution in exercising jurisdiction under section 20C. In *Scmlla*, at [27], the Tribunal stressed that the invasiveness of a section 20C order, and the fact that it "interferes with the parties' contractual rights and obligations", was a reason for such caution: a section 20C order "ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances." This observation was made to emphasise the importance of the landlord having a proper opportunity to put its own case in reply, but it is equally applicable to the importance of restraint in the breadth of any order that is being contemplated. As the Deputy President intimated in granting permission to appeal, it is essential that the FTT considers carefully the scope and extent of the order it is making, and that any section 20C order clearly states the persons in whose favour it is made.

53. The jurisdiction of the FTT is entirely statutory. It is clear from section 20C, the statutory provision conferring jurisdiction in this case, that jurisdiction is based and founded upon the application itself. In the absence of an application, there is no jurisdiction; and once an application is made, it is from the application that the jurisdiction of the FTT is exclusively derived. The identity of the applicant is crucial when one comes to consider the FTT's power to make a section 20C order. It is not disputed that the applicant tenant may apply for such an order, and so too may persons who are specified in the tenant's application. "Specified" does not necessarily mean "named", and there may be instances where, despite the person not being named as such, that person is "specified" by being readily identifiable by other means.

54. But to allow orders to affect persons who have not sought assistance, and who may positively not want it, has the potential to create real practical difficulties. The section 20C application is and can be binding only on those persons who are either applicants or have been specified in the application. As Mr Bates has observed, once the section 20C application is determined, it does not prevent other tenants in the same estate, or in the same building, bringing applications themselves for similar relief. Indeed, there seems to be no means whereby tenants who have not been party to an application (in the sense of being applicants or being specified, with their consent or authority, by another tenant) can be prevented from making an application of their own after the earlier application has been refused. If the determination of an application made purportedly on their behalf, but without their authority, does not conclude the issue of their entitlement to a section 20C order, the potential for multiple, and conflicting, applications is obvious.

55. It is not the usual practice of courts or tribunals to come to the aid of those who have not specifically sought a remedy or relief (and who, in the absence of any indication either way, may not want it). If the intention of those enacting section 20C was to provide a remedy in such circumstances, in the face of the practical difficulties outlined above, it might be expected that clear language would have been used to express that intention. It is notable that where remedies are available to persons who are not themselves parties to proceedings specific provision to that effect has been made to ensure that proper control can be exercised by the court: see CPR Part 19, specifically Rules 19.6, 19.7 and 19.11.

56. It seems therefore that to require a person "specified" under section 20C to have given consent or authority to the tenant making the application on their behalf is entirely consistent with basic jurisdictional principles. I therefore conclude that for a person to be validly "specified" under section 20C(1) that person must have given their consent or authority to the applicant in whose application the person is specified (that is named or otherwise identified). The issue of authority may be easier to resolve where the representative is legally qualified, as is evident from the Tribunal decision in *Rotenberg*, but, whatever the status of the representative, it is essential that the representative has been properly authorised to act.

57. The Tribunal has some sympathy with Mr Low. In making the statement on his application form that he sought a section 20C order in favour of all the leaseholders on the estate, he was acting out of public-spiritedness, and I accept that a significant number of those leaseholders gave him their support. Moreover, the point upon which the appeal has been decided was not a point raised at any stage by the appellant, and it required the diligence of the Tribunal, when permission to appeal the decision of the FTT was being sought, to draw the attention of those involved to the issue.

58. It does not, however, seem to me that sympathy for Mr Low can or should affect the result of this appeal. There can be no doubt, in my judgment, that the issue in question goes to jurisdiction. The order made by the FTT, as explained following enquiry by this Tribunal, was far too wide, and in the absence of any proof of the consent or authority of leaseholders being given it must follow that the order be set aside save and insofar as it provides protection to Mr Low himself. The appeal is therefore allowed.

Costs of this appeal

59. Taking the above matters into account, I am satisfied that it is just and equitable to make an order to the effect that costs incurred by the appellant in these section 20C proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charges payable by Mr Low, Mr Donebauer and those leaseholders who are individually named in Mr Donebauer's application (such order being for the protection of the current leaseholders, so that if a flat has changed hands since the application was made, the successor in title shall benefit from the order).

60. It is however open to the parties to make written submissions in relation to the order I am contemplating at paragraph [59] above or indeed on any other consequential matter within 14 days of the date of this decision. In the event of no such submissions being received, an order to such effect shall be confirmed by the Tribunal.

His Honour Judge Stuart Bridge

14 August 2019

Schedule of Respondents

Mr Brian Alden Fairman	Flat 20 Calico House
Krishan Kumar Malhotra Shalini Devi Malhotra Anusha Malhotra	Flat 21 Calico House
Mr Michael Arko-Adjei	Flat 22 Calico House
Mr Abdul Rahman Fakhry Mr Jawaher Mahmoud Fakhry	23 Calico House
Mr Peter James Rawbones-Viljoen	Flat 24 Calico House
Mr Robin Keith Ashmore Mrs Gillian Vyne Ashmore	Flat 25 Calico House
Mr Howard Michael Freeman Mr Kenneth Willian Dunn	Woodbury Place
Mr Alexander Dudley Stewart-Clark	Flat 15 Ivory House
Mr Christopher John Medland	102 Camelsdale Road
Mr Stephen Edward Quinn	Flat 19 Ivory House
Katie Jane Ellwood James Donald Cunningham	Flat 20 Ivory House
Longtown Investments Limited	C/o Kelmer and Partners 3rd Floor, East Unit 12 Bridewell Place
Palmville (AEB) Limited	FAO Mr P Quayle 12-14 Finch Road
Jonathan Mark Ansell Debbie Jane Ansell	8 Stonebank Gardens
Majed Fakhri	25 Ivory House
Mr Peter John Donebauer	Flat 27 Ivory House
Mr David Lawrence Galway	Flat 28 Ivory House