



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

Case Reference : CAM/11UE/LSC/2018/0062

Property : 9 Old Fives Court, Burnham, Slough, Berkshire SL1 7ET

Applicant : Bettina Jackson (acting in person)

Respondent : Beeches Way Management Company Ltd

Application : Determination of an application to appeal the decision of the first-tier tribunal

Tribunal Members : Judge Reeder
Mrs S Redmond BSc ECON MRICS
Mr M Bhatti MBE

Date of Decision : 24 May 2019

DECISION
Application for permission to appeal

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1. The Tribunal heard this case over a full day on 23 January 2019 and made its determinations on that same day. A written reasoned decision was drafted on 10 March 2019 and sent to the parties on 20 March 2019. On 17 April 2019 the first-tier tribunal received an application for permission to appeal that decision from the applicant, Ms Bettina Jackson (hereafter ‘the applicant’). The applicant has filed a completed pro forma RP PTA application form and provided 8 pages of written reasons in support of her application.

2. The first-tier tribunal made the following determinations in March 2019 –
 - a. The Tribunal determines that the applicant, if a former tenant at the date of the commencement of these proceedings, had the right to apply to this Tribunal pursuant to s27A of the Landlord & Tenant Act 1985.
 - b. The Tribunal determines the service charges challenged for the entirety of 2017 and for January and February 2018 had been agreed or admitted for the purposes of section 27A(4)(a) of the 1985 Act, and accordingly that part of the application which relates to the service charges for 2017 and for January and February 2018 is struck out pursuant to Rule 9(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
 - c. The Tribunal determines that the January and July 2018 service charge demands were valid.
 - d. The Tribunal determines that the respondent had not failed to provide service charge information as required by section 21 of the Landlord and Tenant Act 1985, and that the applicant was not therefore entitled to withhold service charge payments pursuant to s21A of the Act.
 - e. The Tribunal determined that the 2018 managing agent fee of £220 for the applicant's property is reasonable and payable.
 - f. The Tribunal determined that the applicant shall pay the respondent's costs from 14 November 2018 being the date of her Reply.
 - g. The Tribunal determined that it was just and equitable to make an order pursuant to s20C of the Landlord and Tenant Act 1985 in respect of the current tenants of 5-28 Old Fives Court at the date of this Decision.
3. The applicant now seeks permission to appeal on the grounds that the first tier-tribunal wrongly interpreted or applied the law, failed to take account of relevant evidence or considerations, and otherwise fell into error.

4. It is argued that the first tier-tribunal wrongly interpreted or applied the law in that it failed to take into account the applicant's evidence that the January and February 2018 payments were made "erroneously" as the applicant failed to cancel a standing order and so the payments were in fact made with the qualification that the service charge demands were disputed. The tribunal made findings of fact on the circumstances and chronology of the payments and correctly applied the law (Decision : paragraphs 24-30).
5. It is argued that the tribunal failed to take account of relevant evidence or considerations in relation to the applicant asserting a right to withhold service charge payments until she was provided with finalised service charge accounts. In its written evidence and during the hearing the respondent cogently explained why there were delays in finalising accounts arising from decisions of the respondent lessee management company including changing the managing agents, and that the accounts were provided as soon as was possible after the accounting year ends. The effect of paragraph 2 of the Fifth Schedule was considered. The applicant was not able to provide any tenable basis for her assertion that she was entitled to withhold service charge payments because of those delays.
6. It is argued that the tribunal otherwise fell into error in that the decision sheet cited 2018 as well as 2019 dates (whereas 2019 is correct), paragraph 33 of the decision referred to paragraph 5 of Schedule 2 to the relevant lease (whereas it should have referred to paragraph 2 of Schedule 5), and paragraph 34 fails to refer to Thamesway Homes Limited. The first two errors are obvious administrative slips which are of no effect on the substantive decisions made. The 'Thamesway Homes' point is misconceived in that the tribunal carefully considered whether the 2018 service charge demands were invalid as argued and determined that they were valid. In doing so each demand was read and considered and analysed as set out in the Decision.
7. The applicant further argues against the costs order made on the ground that she acted in the belief that the February and July 2018 service demands were invalid such that the service charges demanded were not payable. The issue of whether a costs order should be made against the applicant was carefully considered by the Tribunal (Decision : paragraphs 40-45). However, it is acknowledged by the tribunal that, notwithstanding the finding that the putative reasonable litigant in person would not have continued the application to the first-tier tribunal given the October 2018 directions order from the Regional Judge and the November 2018 detailed statement of case from the respondent, it is possible that the applicant nonetheless acted in the honest belief that the demands were invalid and that she has no liability to pay the service charges.

8. The first-tier tribunal has given careful consideration to the grounds very ably presented in the written application, to the provisions of Part 6 (Correcting, Setting Aside, Reviewing and Appealing Tribunal Decisions) and Rule 3 (the overriding objective) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to the guidance to be found in decisions such as *Smith v Cosworth* [1997] 1 WLR 1538 , *Swain v Hillman* [2001] 1 All ER 91, and *PJC Commercial Bank v Komolmoisky* [2018] EWHC 3835. Accordingly, the tribunal has considered whether any of the grounds pursued are arguable and have a realistic rather than fanciful prospect of success.

9. Having regard to rules 3, 53 and 55 the Tribunal has considered whether to review the decision made in March 2019 and determined that it is not appropriate to do so. The Tribunal has determined that none of the substantive grounds pursued are arguable and have a realistic rather than fanciful prospect of success.

10. However, in relation to the determination that the applicant should pay the respondent's costs from the date of date of her Reply on 14 November 2018 order it is acknowledged by the Tribunal that, notwithstanding the finding that the putative reasonable litigant in person would not have continued the application to the first-tier tribunal given the October 2018 directions order from the Regional Judge and the November 2018 detailed statement of case from the respondent, it is possible that the applicant nonetheless acted in the honest belief that the demands were invalid and that she had no liability to pay the service charges and so may be characterised as misguided rather than 'unreasonable' in the *Willow Court Management* sense. The Tribunal considers that this issue may have a realistic rather than fanciful prospect of success and accordingly grants permission to appeal on this issue only.

Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

24 May 2019

RIGHT OF APPEAL

In accordance with Rule 53(5) of the 2013 Rules the applicant is hereby notified of the right to make an application to the Upper Tribunal (Lands Chamber) for permission to appeal. Any such application must be made within 14 days after the date that this decision refusing permission to appeal is sent by the first-tier tribunal.