



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

Case Reference : **LON/00BK/LSC/2019/0126**

Property : **The Water Gardens, Burwood Place,
London W2 2DA**

Applicants : **Mr CI Bhojwani and 127 other lessees**

Representative : **Mr M Reiss**

Respondent : **Church Commissioners for England**

Representative : **Charles Russell Speechlys LLP
Ms Cecily Crampin, counsel**

Type of Application : **Liability to pay service charges**

Tribunal : **Judge Nicol
Mr SF Mason BSc FRICS**

**Date and Venue of
Hearing** : **12th August 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **12th August 2019**

DECISION

Decisions of the Tribunal

- (1) The costs of £168,282 which are the subject of this application have been reasonably incurred and the resulting service charges are payable by the Applicants (other than those who were also Applicants in relation to the Tribunal's decision dated 21st March 2018 in case reference LON/00BK/LSC/2017/0116).
- (2) There shall be no order under section 20C of the Landlord and Tenant Act 1985 in respect of the current proceedings.

- (3) An application for the lessees of flat 45, Mohammed Ali Marzook Bin Kamil and Marzook Ali Marzook Bin Kamil, to be joined as Applicants came too late and is refused.

Relevant legislative provisions are set out in Appendix 1 to this decision.

The Tribunal's Reasons

1. The subject property is a block of flats containing 251 flats. Mr Reiss, the son-in-law of one of the lessees, Mrs Ingram, brought an application on behalf of her and 18 other lessees under case reference LON/00BK/LSC/2017/0116 which the Tribunal determined on 12th February 2018. The Tribunal decided that the service charges relating to management fees for the years 2013-18 were fair and reasonable.
2. In a separate decision dated 21st March 2018 the same Tribunal decided that it would be just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs could not be added to the service charges. In particular, the Tribunal relied on its comments from the decision of 12th February 2018:

The tribunal does however criticise the managing agents in two matters. First the failure of Knight Frank employees to respond to proper and reasonable enquiries made by Mr Reiss. Examples were highlighted of failures to respond to letters not just once but multiple times. This is simply not good enough for a company of Knight Frank's standing and if further issues between the parties are to be avoided the tribunal earnestly hopes that this failure to correspond and communicate is not repeated in the future. Secondly, reference has been made to the document in Mr Reiss's appendix 6 being the document prepared and submitted to Mr Reiss by Sindu Teklemariam. This was accepted by all parties to be an incorrect document and one that should not have been issued. It certainly initially misled Mr Reiss. It does leave Knight Frank open to criticism for allowing the document to be issued in a misleading format. No doubt the agents will have put in place management arrangements that should stop this happening again.

3. However, that section 20C order only applied to the 19 Applicants to that application. The Respondent is seeking their costs from the other lessees where their leases permit it. Mr Reiss has now brought a further application on behalf of other lessees who were not Applicants to the previous application.
4. The new application includes 18 of the previous Applicants but they are only parties to join in with a new section 20C application in relation to the current proceedings. The Respondent accepts that they are entitled to the protection of the existing section 20C order in any event.
5. Mr Reiss does not challenge the quantum of the costs which the Respondent says they incurred. He argues that none of the costs were reasonably incurred on the basis of one point only, namely that Knight Frank were negligent in producing the document referred to in the second part of the above quote and,

if that negligence had not occurred, he would never have brought the application so that the costs would never have been incurred.

6. There is a number of problems with Mr Reiss's argument which were explored in the hearing before the Tribunal on 12th August 2019. However, it is not necessary to go into detail on the various matters because the application fails in a very clear and obvious way, namely that the document in question did not have the consequences he argues.
7. Mr Reiss's application challenged the management fees incurred by Knight Frank. As one of the matters in support of this, he relied on the aforementioned document. It purported to provide an account of monies paid out of the reserve fund for the year 2015 but omitted a number of invoices – the Respondent admits that this was wrong. As Mr Reiss put it in his Supplementary Reply in that application:

All this demonstrates an inability by Knight Frank to properly account for monies received from tenants which strikes to the very root of their competence to deal with such matters. In addition, the matter of false statements made by Knight Frank raises wider and more troubling issues.

I consider the above to be central to the Applicants' Statement of Case.
8. Mr Reiss's central thesis was that Knight Frank were not up to the job, of which the document provided an example, albeit an important one. Mr Reiss argued that this was his one piece of rock solid evidence but it would have been clear at all times that his application would not succeed on the basis of one misleading document.
9. Mr Reiss gave much of his submissions to the Tribunal trying to show that he never received a proper explanation of the document and, if he had, he would not have continued with his application from the time that he received that explanation. However, he got just such an explanation in a witness statement from Ms Lesley Thomas, Head of Accounts for Knight Frank, which he received on 17th July 2017. Instead of withdrawing his application or narrowing the issues, he took the opportunity provided by the hearing being adjourned from 14th August 2017 to 22nd January 2018 to produce a Supplementary Statement of Case dated 11th September 2017 in which he made further points about the document but also introduced a new point about the annual indexation of Knight Frank's fees.
10. The question is whether the legal fees were reasonably incurred by the Respondent. In addressing this question, the Respondent was not answering Mr Reiss's subjective agenda but the case presented in the application and the supporting documents. They were obliged to respond to the whole case and could not assume that Mr Reiss regarded any one point as so essential that they did not need to address other issues with similar vigour.
11. In essence, the Tribunal does not accept Mr Reiss's assertion that he would not have brought the case but for the existence of this one document. There was always more to the dispute than just this one issue. In these circumstances, his

submission fails and there is no basis for holding the Respondent's legal costs to have been unreasonably incurred.

12. After the end of the hearing, a letter dated 8th August 2019 from Mr Reiss came to the Tribunal's attention asking for the lessees of flat 45, Mohammed Ali Marzook Bin Kamil and Marzook Ali Marzook Bin Kamil, to be joined as Applicants. Two other lessees, Saladin Investments and Husain A Almazi, had previously been joined and another, Naima Kassir, had withdrawn by previous order of the Tribunal. However, this further request came too late and is refused.

Name: NK Nicol

Date: 12th August 2019

Appendix 1 – Relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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 the Upper 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) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.