



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

**Case reference** : **LON/00/00BD/LSC/2019/0237**

**Property** : **21 Matthias Court, Richmond TW10  
6LL**

**Applicant** : **Mr. Christopher Hicks**

**Representative** : **N/A**

**Respondent** : **Mathias Court Management Co Ltd**

**Representative** : **JCF Property Management**

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

**Tribunal member(s)** : **Judge Tagliavini  
Ms A Rawlence MRICS**

**Date and venue of  
(paper) determination** : **10 September 2019 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **11 September 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the Respondent is entitled to collect a Reserve Fund in the sum of £30,000 as demanded for the service charge year 2019/2020.
  - (2) The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.
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## **The application**

1. The applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) seeking the tribunal’s determination as to whether the applicant’s proportion of a Reserve Fund in the sum of £30,000 can be collected from in accordance with the term of the lease.
2. At the date of application, the applicant also raised an issue as to whether a contribution to a (sinking) fund for pointing works should be allowed and whether there should be a credit to the applicant’s account in respect of this. However, at the date of this determination the applicants only wish to proceed with the first issue identified at paragraph 1 above.

## **Background**

3. The subject premises comprise a development of three blocks of flats built in 1970’s each block containing 11 flats all held on long leases. By a lease dated 1<sup>st</sup> December 1997 made between Matthias Court Freehold Company and Matthias Court Management Company (“the Management Company”) and Mr. Christopher Hicks, the applicant was granted a leasehold interest of 999 years commencing on 25<sup>th</sup> March 1997. The Management Company is responsible for maintaining the property and is authorised to collect service charges. The service charge year runs from 1 January to 31<sup>st</sup> December of the same year and service charges are apportioned according to the number of shares held by each lessee in the Management Company. The applicant’s share of the service charges is apportioned at 2/69 as a total of 69 shares are held in the Management Company.
4. A demand dated 21 December 2018 for the applicant’s proportional payment of service charges comprised of:
  - (i) A budget of expenditure for 2019 amounting to £76,034
  - (ii) A contribution to a Reserve Fund of £30,000

- (iii) A supplementary payment of £36,000 for internal redecoration
- (iv) The first payment of £80,000 for the first stage of the repointing project to be carried out in three stages.

5. Mr. Hicks seeks to challenge the demand of £30,000 as it does not appear to have been based on a forecast of future expenditure and objects to this apparently open-ended fund where the respondent's Board of Directors can choose how to spend the money.

### **The applicant's evidence**

6. In support of the application the applicant provided the tribunal with an indexed and paginated bundle of documents together with an additional letter dated 2<sup>nd</sup> September 2019. In his Statement, the applicant expanded on the reasons why he opposed the collection of a Reserve Fund and stated that the amount of £30,000 is far in excess of what is required to cover all known expenditure in the short, medium and long term. The applicant also asserted that the Reserve Fund would be held with no apparent need or purpose and will be spent frivolously as had happened in the past.
7. The applicant drew the tribunal's attention to clause 3(2) of the lease which provided for the payment of the annual service charge plus such further sums as the Management Company may "*in its own reasonable discretion request.*" However, as the Management Company has given no reason or identified a purpose for the collection of the Reserve Fund, it is unreasonable. The Applicant stated that the Sixth Schedule permitted the establishment of a sinking fund which in the dictionary sense meant a fund set aside for the purpose of wiping out gradually a country's or business company's debt. However, the Reserve Fund is not a Sinking Fund as it does not have the characteristics of a Sinking Fund. The applicant also asserted that the collection of a Reserve Fund of £30,000 was in breach of the Fifth Schedule which stated that the Management Company "*shall endeavour to maintain the service charge at the lowest reasonable figure...*"
8. The applicant asserted that the intention of the lease is that lessees should be charged only for actual expenditure during any given year (plus any set side in a sinking fund). The introduction of an open-ended reserve fund the contributions to which could not be considered as 'actual expenditure' would frustrate the purpose of the Lease. Therefore, the tribunal should determine that the collection of a Reserve Fund of £30,000 is not permitted under the terms of the lease.

### **The respondent's case**

9. The respondent also provided the tribunal with an indexed and paginated bundle of documents in support of his opposition to the application. In a Statement by Ms Varszegi it was submitted that the references to a Sinking Fund in Clause 1 of the Sixth Schedule and to a Reserve Fund in Clause 9(C) (D) and (E) in the lease had the same

meaning as there was nothing to distinguish them. The respondent referred to the Sixth Schedule which permits the establishment of a sinking/reserve fund for the purpose of carrying out the Management Company's obligation to maintain and repair the property and refers to the setting up of a single sinking fund in contrast to the various sinking/reserve funds that had been established for specific items of work. The respondent asserted that the figure of £30,000 was kept deliberately low in view of the additional funds that the lessees were being asked to contribute for works of internal refurbishment and repointing.

10. The respondent asserted that paragraph 4 of the Fifth Schedule of the lease permits service charges to be demanded for a forthcoming service charge year based on an estimate of expenditure for that year. When the actual service charge accounts are finalised, any surplus is credited to the lessees or any deficit is collected. The sinking/reserve fund monies are correctly included within the budgeted expenditure and also within the actual expenditure and are not intended for day to day management of the property but for cyclical and periodic maintenance within the terms of the lease.
11. The respondent also asserted that for a development with lifts, communal water tanks, entry phone systems, gardens, underground car park etc. it was reasonable to build up and maintain a healthy General Reserve Fund rather than having to revert to sending out special demands based upon the estimate costs of major works projects as they arise. Therefore, the application should be dismissed.

### **The tribunal's decision and reasons**

12. As neither party requested an oral hearing this application was determined on the documents provided by both parties. Having regard to the terms of lease the tribunal finds that this requires the lessee applicant to pay:
  - all sums which the respondent may reasonably require (clause 2(15));
  - pay the service charge and such further sums the Management Company may in its own reasonable discretion request (clause 3(2)(i));
  - to pay sums that were expended by the Management Company as an urgent necessity where reimbursement is not possible from the annual service charge paid or from any sinking fund (clause 3(2)(ii))
13. The Fifth Schedule of the lease refers to the accounting period as 25 March to the 24<sup>th</sup> March and that the Management Company shall endeavour to keep the service charge as low as possible. The Sixth Schedule of the lease sets out the Maintenance Company's obligation to keep "in good and substantial" repair the areas and parts of the

building not demised to the lessees for which it may establish a sinking fund.

14. The tribunal finds that the lease makes provision for the Management Company to set up both a Sinking Fund for the purposes of carrying out its obligations under the Sixth Schedule and also a Reserve Fund which the Managing Agent may require or reasonably request pursuant to clauses 2(15) and clause 3(2)(1). Therefore, the tribunal regards the setting up of a Reserve Fund in the sum of £30,000 to be within the terms of the lease for any unspecified but anticipated works the Management Company considers may be reasonably required. The tribunal does not agree with either parties' analysis of the terms of the lease and finds that the terms 'sinking fund' and 'reserve fund' are not to be conflated but refer to two specific types of fund albeit the purpose of both, is to ensure the proper maintenance and reasonable improvement of the subject property.
15. Therefore, the tribunal finds that the respondent is entitled to collect a Reserve Fund and considers that the amount of £30,000 is reasonable. The tribunal therefore dismisses the application.

### **Section 20C**

16. The applicant has also made an application under the provisions of section 20C of the 1985 Act seeking an order that the costs incurred by the landlord are not to be included in any service charges. In light of the tribunal's decision the tribunal refuses this application and determines that in so far as the lease allows, the costs of this application incurred by the respondent may be added to the service charge.

**Name:** Judge Tagliavini

**Date:** 11 September 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).