



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

Case Reference : **LON/00AU/LAC/2019/0029**

Property : **Flat 28, 73a Drayton Park, London.
N5 1DW**

Applicants : **John Henry Irwin
Karen Elizabeth Irwin.**

Representative : **Braddon & Snow Solicitors**

Respondent : **Stadium Development Ltd.**

Representative : **Thrings LLP**

Type of Application : **For the determination of the
reasonableness of and the liability to
pay administration charges and related
applications.**

Tribunal Members : **Tribunal Judge Stuart Walker
(Chairman)
Mr. John Barlow FRICS**

**Date and venue of
Hearing** : **Decided on the Papers**

Date of Decision : **11 March 2020**

DECISION

Decision of the Tribunal

- (1) The Tribunal determines that it has no jurisdiction to deal with the application by virtue of the operation of paragraph 5(4)(a) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The disputed charges in this case have been agreed by the Applicants.

Reasons

The Application

1. The Applicants seek a determination pursuant to paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“Schedule 11”) as to the amount of administration charges payable by them in respect of the granting of consent to the assignment of their lease in respect of the property to a third party. The sums in question are £300 plus VAT charged by the landlord and £600 plus VAT charged by the landlord’s solicitors, a total of £900 plus VAT or £1,080. The Applicants also seek an order under section 20C of the Landlord and tenant Act 1985 (“section 20C”) and paragraph 5A of Schedule 11.
2. The application was made on 11 December 2019. Directions were issued on 24 December 2019. They provided that the Tribunal would determine the application on the papers in the week commencing 9 March 2020 unless either party made a request for an oral hearing. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.
3. The issues identified in the application concerned three areas of dispute. The first was that the payment demands made by the Respondent did not meet the requirements of paragraph 4 of Schedule 11. The third issue was whether or not the charges sought were reasonable.
4. Importantly, the Applicants in their application also raised, as their second issue, the question of whether or not the fact that the charges had been paid prejudiced their application because of the operation of paragraph 5 of Schedule 11.
5. It is helpful to set out the relevant provisions at this stage.
6. Paragraph 5(4) of Schedule 11 states as follows;
 *“No application under sub-paragraph (1) [an application of this kind] may be made in respect of a matter which;
 (a) has been agreed or admitted by the tenant”*
Paragraph 5(5) then provides that;
 “But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment”
7. In their reply to issues raised by the Applicants the Respondent expressly asserts that an undertaking given by the Applicants’ solicitors amounts to an agreement to pay the charges and so paragraph 5(4) of Schedule 11 applies (see para 7 at page 112 of the bundle).
8. The Tribunal therefore considered the question of jurisdiction as a preliminary issue.

9. The Tribunal had an indexed and paginated bundle prepared by the Applicants and page references in what follows are to that bundle.

Findings of Fact – Was There An Agreement to Pay

10. The Tribunal had copies of e-mail correspondence between the parties' solicitors. It shows the following.
11. On 2 October 2019 the Respondent's solicitors e-mailed the Applicants' solicitors in response to their request for consent to assign their lease of the property. This asked them to give an undertaking to pay;
“our costs in the sum of £600 plus VAT plus AGS's administration fee of £300 plus VAT, being a total of £1,080 (inclusive of VAT). These costs are payable regardless of whether or not the matter proceeds to completion and your undertaking must be expressed as such” (page 93)
12. The reply to this on the same day was that the e-mail appeared to be in standard form. The Applicants' solicitors stated that they would take instructions in connection with the fees and asked for details of what the fees covered (page 94).
13. On 8 October 2019 the Respondent's solicitors replied, setting out what the fees covered (page 95).
14. On 14 October 2019 the Applicants' solicitors replied that their instructions were not to commit to any expenditure until contracts are exchanged (page 96). The reply two days later was that no guarantee could be given but a licence to assign normally took 2 to 4 weeks (page 97).
15. Just over a month passed until on 18 November the Applicants' solicitors wrote an e-mail in the following terms;
“We are pleased to advise that we are now in a position to proceed with the licence to assign.

We therefore undertake to pay your client's costs, limited to £1,080 (inclusive of VAT), in connection with the grant of the licence to assign whether or not the matter proceeds to completion.

We enclose a further copy of the licence which we have drafted (based on the licence our client entered into when he purchased the property) and hope that by approving this document rather than drafting from scratch your costs may be kept to a more reasonable level. We look forward to receiving your approval or details of any amendments that your clients require (obviously if your client now uses a completely different form of precedent licence then please provide us with a draft for approval instead of considering our draft document” (page 98)

16. The Respondent's solicitors replied that it would be more expensive to review the draft licence provided rather than to use their own standard document and a draft licence was sent (page 99). Two amendments were suggested, which were made, and the licence was agreed (pages 100 and 101).
17. On the following day the Applicants' solicitors wrote an e-mail which included the following;
"Now that the form of licence has been agreed and engrossments are being issued, I look forward to receiving the demand for the payment of the administration charge relating to the grant of the licence, in accordance with paragraph 4 of the Commonhold and Leasehold Reform Act 2002, for settlement." (page 102).
18. A further request for a demand for payment was made on 29 November 2019 (page 105).
19. The Tribunal is satisfied that the Applicants' solicitors were acting on the Applicants' instructions – there is no suggestion to the contrary – and is satisfied that any agreement set out in this correspondence binds the Applicants.
20. It is equally clear to the Tribunal that the Applicants' have given a formal undertaking on behalf of their clients to pay a sum up to £1,080 – the sum in dispute. This is an unambiguous undertaking which was subsequently relied on to enable completion ahead of payment (see page 108). There is no reservation of any kind to the agreement to pay. There is no suggestion that the sum is only being paid in protest as it is too high, nor is there any suggestion that the Applicants are reserving their position in any way.
21. The Tribunal bears in mind the suggestion made by the Applicants' solicitors that use of their draft may result in a reduction in the fees. This does not, in the Tribunal's view, detract from the clear undertaking which was given. It is merely a suggestion of a possibly cheaper way forward. It forms part of the negotiations between the parties and was rejected by the Respondent on the grounds that it would, in fact, be more expensive. There was no subsequent complaint about the level of fees after this alternative was rejected.
22. The Tribunal bears in mind paragraph 5(5) of Schedule 11. It also had referred to it the case of Avon Freeholds -v- Garnier [2016] UKUT 477 (LC) (pages 128 to 133). In this case the Upper Tribunal considered that a person in the position of the Applicants had three choices when presented with an administration charge. The first was simply to make the payment, the second was to make the payment expressly under protest and/or expressly reserving the right to invoke the Tribunal's jurisdiction under Schedule 11, and the third was to agree to make the payment. The first two would not oust the Tribunal's jurisdiction but the third would (see paragraph 20 of the judgment).

23. In this case the Tribunal is satisfied that the Applicants have, by virtue of the express undertaking in advance of payment given by their solicitors, agreed to the charge.

The Tribunal's Decision

24. Given the Tribunal's finding that the Applicants agreed to the charge in this case the Tribunal is satisfied that it has no jurisdiction to determine their application by virtue of paragraph 5(4)(a) of Schedule 11. It follows that it also has no jurisdiction to deal with the subsidiary applications made under section 20C or paragraph 5A of Schedule 11.

Name: Tribunal Judge
S.J. Walker

Date: 11 March 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.