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

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| **Case Reference** | : | **MAN/LSC/2020/0005** |
| **Property** | : | **Flat 7 St Ann's Tower, Kirkstall Lane, Leeds LS6 3DS** |
| **Applicant** | : | **St Ann's Tower Management Limited** |
| **Respondent** | : | **Mr. Piers Fitzgerald** |
| **Type of Application** | : | **s27A and s20CLandlord and Tenant Act 1985 Commonhold and Leasehold Reform Act 2002 - Sch 11 para 5** |
| **Tribunal Members** | : | **Mr John Murray LLB**<br>**Ms. Aisling Ramshaw FRICS** |
| **Date of Determination** | : | **20 August 2020** |
| **Date of Decision** | : | **3 September 2020** |

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**DECISION**

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## DECISION

**A. The Tribunal determines that no Administration Charges for the years under review are due from the Respondent to the Applicant.**

**B. The Tribunal makes an order under s20 of the Landlord and Act 1095 that the costs arising and associated with these proceedings shall not be regarded as relevant costs in determining the amount of any service charges payable by the Respondent.**

## INTRODUCTION

1. The Applicant issued proceedings numbered F95 YH865 in the County Court Money Claims Centre for service charges and administration charges for the service charge year 2018 – 2019 totalling £891.89

2. The Defendant filed a defence and the matter was listed for a small claims hearing.

3. The matter was transferred to the Tribunal by an order of the Court dated 7 January 2020 with the consent of the parties for the Tribunal to determine the reasonableness of both service charges and administration charges under s27A Landlord and Tenant Act 1985 and Schedule 11 paragraph 5 of the Commonhold and Leasehold Reform Act 2002 respectively.

4. The Respondent sought an order under s20C Landlord and Tenant Act 1985.

## THE PROCEEDINGS

5. Directions were made by a Procedural Judge on 5 March 2020 for the parties to sequentially exchange statements of their respective cases. The Procedural Judge considered it appropriate for the application to be determined on the papers without holding a hearing or inspecting the property. The parties were invited to write to the Tribunal within 28 days of the directions if they wanted to attend a hearing.

## THE LEASE

6. The Property was let to the Respondent by a lease dated 27th November 1997 for a term of 125 years from the 30th September 1992.

7. The Applicant Management Company was a party to the lease, responsible for the management functions of the development known as St Ann's Tower, comprised of ten residential units. and owned by each of the property owners of the development. Pursuant to the lease the Respondents would become a member of the Management Company.

8. The Respondent covenanted in Clause 4.1.2 of the Lease to pay to the Company such sums of the Tenants Contribution as the Company or its' agents may consider reasonable sufficient (together with the contribution paid or payable by the other tenants to meet the Service Charge for the period until the next due date such cost shall include the reasonable fees of managing agents and other professional engaged in providing the Service Obligations. The due dates were defined as the 25th March and the 29th September each year.

9. At 4.1.3 the Respondent covenanted within fourteen days of receipt of a copy of the Auditor's Certificate of the total expenditure on Service Obligations incurred by the Company for the previous accounting year to pay the Company the Tenant's Contribution less any amount or amounts which the Tenant may have already paid in advance.

10. At 4.1.4 the Respondent covenanted within fourteen days of demand to pay to the Company the same percentage as the tenant's Contribution of any sum or sums actually expended by the Company or which it might be necessary to expend in performance of the Service Obligations or retained in a sinking fund for such purposes which expenditure the Company cannot meet from funds in hand and at the same time retain sufficient monies for routine expenditure.

11. The Tenant's Contribution was defined by Clause 1.1.9 – subject to the provisions of clause 8.4 hereof, the same proportion of the Service Charge as the proportion that the floor area of the Flat bears to the aggregate of the floor areas of all the flats in the Building including the Flat such area to be determined by the Landlords' surveyors whose opinion shall be binding having regard to the benefit obtained by the Tenant from the services provided pursuant to the provisions hereafter contained or any of them.

12. Clause 5 set out the Applicant's covenants with the Landlord to carry out services at St. Ann's Tower.

13. At Clause 8.2, the Applicant may in any accounting year revise its' estimate for the Service Charge for that year whereupon the necessary adjustment to reflect such revised estimate shall be made to the quarterly payments in advance.

**THE LAW**

The relevant legislation is contained in of sections 19, 27A and s20C Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the relevant paragraphs of which read as follows:

**s19 Limitation of service charges: reasonableness.**

(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 provision 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

s27A Liability to pay service charges: jurisdiction.

(1) An application may be made to an 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 an 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on an appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

**Schedule 11 to the Commonhold and Leasehold Reform Act 2002**

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

**Liability to pay administration charges**

5 (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

**s20C Limitation of service charges: costs of proceedings.**

(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, an appropriate 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 an appropriate tribunal;

(b) in the case of proceedings before an appropriate tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any appropriate 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.

**SUBMISSIONS**

**THE APPLICANT'S STATEMENT OF CASE**

14. The Applicant filed an undated statement of case by their solicitors Keebles LLP t/a PM Legal Services.

15. The statement asserted that the Respondent was the registered proprietor of Flat 7, St Ann's Tower, Kirkstall Lane, Headingley, ("the Property"). St Ann's Tower is comprised of ten residential units, each let on a long lease.

16. The statement set out the pertinent terms of the lease obliging the Respondent to pay service charges on the 25th March and 29th September each year.

17. The Applicant set out covenants contained in Clause 5 to the Lease as to what services the Respondent was obliged to carry out.

18. The Applicant set out additional expenses to be reimbursed by the Respondent via the Service Charge mechanism in Clause 8. These did not reflect the wording of Clause 8 however.

19. Annexed at pages 26-27 of the statement of case was a Statement of Account dated 18 March 20 with an overall balance of £676.26. The original account was for £891.89 arrears for the period 25 March to 28 September 2019.

20. The Applicant provided the Budget for the period in question, the Service Charge demands, a Summary of the Tenant's Rights and Obligations and the Year End Accounts for the period in question.

21. In response to the counterclaim made within the County Court proceedings, the Applicant stated that it was unclear whether the County Court had transferred the counterclaim, but in any event they asserted that the Tribunal has no jurisdiction to determine the it, being only able to determine payability of service charges under S27A. They stated that the Counterclaim should be remitted back to the County Court.

22. The Applicant did, to comply with the Tribunal directions, comment that the roof repairs had been the subject of s20 consultation, and produced a copy of the

Respondent's notice from May 2018. The Respondent had been notified in May 2018 that he would be required to contribute £1447. As only one response was received to the tender, the Applicant could not serve State 2 notice and so applied for dispensation from the Tribunal which was granted on 12 February 2019.

**THE RESPONDENT'S STATEMENT OF CASE**

23. In his Defence to the County Court proceedings, the Respondent disputed the claim in its entirety. He said that he had been given assurances by the Claimant that he could pay monthly instalments of the service charge, which he had paid in full since September 1997. He said he had paid service charges of £208.34 on 1.7.19 and the same amount on 2.8.19 with the final installment of £208.35 due on 1.9.19 which he said he would pay in full. He objected therefore to paying the £475.20 for administration charges and legal costs. He said agreement about paying by bank transfer rather than standing order had been reached at the AGM for the Applicant on the 23.7.19. He said that the Applicant had sought direct payment from his lender, which he managed to block.

24. He also made a counterclaim in the County Court for:

    i. overcharging for roof repairs £418.50

    ii. and interest £119.08

    iii. interest £146.94

    iv. Ground rent overcharge £50

    v. Additional charges levied £61.20

25. The Applicant filed an undated statement of case within the Tribunal proceedings.

26. He said he agreed with the notes presented in the Applicant's Statement of Case. He said that the application had been brought by Watson Property Management Limited, ("Watson") on behalf of the Applicant. He said that at least one of the Directors of the Applicant was unaware that the application was being made.

27. He objected to the administration charges as he said the Applicant had accepted that despite the terms of the lease stating service charges are payable by leaseholders on 25th March and 29th September each year, it had long been custom and convention that leaseholders were allowed to pay their service charges quarterly in advance, and subsequently monthly.

28. The Respondent pointed out that the lease contains contradictions; at Clause 4.12 service Charge payments are to be made on the two due dates; however at Clause 8.2 the Lease refers to "the quarterly payments in advance".

29. The Respondent produced a letter dated 25th September 1998 from Centre Leasing and Management Limited, stating that collection would be by standing order in advance. He further produced a letter from the Applicant's company secretary Ms.

Christine Fox dated 13th May 2005 providing a revised standing order for quarterly in advance statements.

30. He went on to say that this discrepancy in the lease and then variation in payment methods by earlier agents and the company secretary implies that any changing of frequency of payments could require notification at the company AGM. Monthly payments by standing order had been collected for thirteen years before Watson took over. They stopped collecting them, without notice, but accepted monthly instalments by all other method at this time. This was changed without notice solely to monthly payments by direct debit from 25th March 2019, and administration charges started to be added. He noted that administration charges in March 2019 were refunded after he phoned to say that hit account was not in deficit.

31. He pointed out that the lease provided for Ground Rent to be paid by half yearly instalments in advance on the 25th March and 29th September each year, but Watson collected it annually each year prior to these dates; it had been charged in full on the 1st January 2019. No invoice was sent for the Ground rent.

32. Referring to paragraph 13.7 of the Applicant's statement of case, which suggested clause 8 provided for the following expenses could be reimbursed: "All legal and other costs incurred by the Applicant in (a) running and management of the building and in the enforcement of covenants; (b) making such applications and representations as the Applicant considers necessary"; no such general statement existed in the lease and brought into question some of the charges levied against him

33. The Respondent stated that at the Applicant's AGM on the 23rd July 2019, Mrs. Sue Walker, a Director of the Applicant stated that service charges could be paid monthly by any method possible and not solely by direct debit. This was confirmed by Mrs. Emma Plews for Watson who informed the Respondent any legal action would be immediately halted. A number of attendees the Respondent had spoken to confirmed this to be accurate, and he produced a statement from Beverly Shadwick to corroborate this. Mrs. Shadwick confirmed in her statement that two other Directors Ian Richardson and John Thackray made no objection to Mrs. Walkers' statement, and that Mrs. Plews had confirmed legal action would be halted. The County Court action was served on the Defendant on the 31st July 2019, a week after the AGM.

34. The Respondent stated that he did not dispute service charges were due. He said that his service charge had been paid in full, and he disputed only the administration fees imposed by Watson, and for the court fees for a claim he said should not have been brought. He disputed the sum of £588.20. He said he had received no correspondence from Watson from 11th July 2019 until he received an email dated 9th March 2020 with the Excess Service Charge detailed for the first time saying "the service charge accounts have now been reconciled". He stated it

was spurious to claim Excess Service Charges were dated 28th September 2019 so he disputed this also.

35. He went on to explain his counterclaim. He said he would waive the Ground Rent overcharge as it subsequently became due. He claimed interest on overdue funds (£330.62), and his court fee of £70 for the court fee for the counterclaim. He objected to the Transfer to the Tribunal as he did not want the counterclaim to be separated. He said the counterclaim was relevant, to set off any overpayments because he was said to be in arrears when he had paid in advance for the roof repairs and was in credit on his account, having paid (on demand) £1447 in May 2018, with the works not being carried out until February 2019. He said Watson should at least have delayed requesting the money until they had three quotes, or until the Tribunal decision was given. The funds had been held for nine months with a large amount of interest resulting.

**APPLICANT'S RESPONSE TO THE RESPONDENT'S STATEMENT OF CASE**

36. The Applicant's solicitors filed an undated response to the Respondent's statement of case.

37. In response to the suggestion that the application was brought by Watson, the Applicant pointed out that Watson were instructed as managing agent for the Applicant. They made no comment on the suggestion that not all the Directors knew of the claim being made.

38. The Applicant disputed the clause quoted that said the service charges were payable in quarterly advance payments.

39. The Applicant reiterated in paragraph 7 of their response their interpretation of clause 8 setting out the expenses against which they said service charge monies could be defrayed.

40. The Applicant stated that they could recover the costs incurred in the enforcement of covenants by Clauses 3.63 and 3.14.2, by failing to pay service charges to the Applicant and consequently the had incurred costs which the Respondent was contractually liable to pay.

41. The Applicant stated it was entirely appropriate to write to the Respondent's mortgagee to put them on notice of the breaches and that action was being taken as a precursor to forfeiture proceedings.

42. They reiterated their position on the counterclaim and referred to the dispensation application made to the Tribunal in October 2018.

43. In response to the Respondent's application for an order under section 20C, they pointed out that the Respondent had admitted the service charges and made

payment, and was the author of his own misfortune in incurring the administration charges.

## THE DETERMINATION

### Service Charges

44. It was common ground that the Service Charges were not disputed and had been paid in full by the Respondent. The Tribunal therefore has no jurisdiction to determine service charges by virtue of s19(4) of the Landlord and Tenant Act 1985.

### Administration Costs

45. The Tribunal finds that the lease contained clauses enabling the Applicant to recover administration charges for recovery of cost incurred in the enforcement of covenants, at Clauses 3.6.3 and 3.14.2.

46. The question for the Tribunal to determine pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 is whether the amount of the charge is payable (paragraph 5(1)), and reasonable in amount (paragraph 2).

47. The Tribunal agrees with the Respondent that there are contradictions in the lease. Initially the lease provides for leaseholders to pay service charges (and Ground Rent) on the due dates of 25th March and 29th September each year; paradoxically, if service charges are to be revised during the service charge year, as envisaged in clause 8.2, the lease refers to quarterly payments, as if that was the arrangement in the lease. The Applicant disputed the clause (8.2) quoted that said the service charges were payable in quarterly advance payments. They did not say why they disputed it, or attempt to clarify the effect of a contradictory clause.

48. To compound the contradictions in the lease, it is clear from the evidence supplied by the Respondent, in terms of correspondence from the Applicants agents, company secretary and attendees at the AGM, that leaseholders were permitted to pay on a monthly basis. St Ann's Tower is a small scheme, of ten neighbours who all have an interest in the Applicant. It is not unusual that they should look to make things "easier for the owners", as Ms. Fox wrote in 2005.

49. The Applicant has not responded to the suggestion that different arrangements were permitted, but simply reiterated the terms of the lease. They do not respond to the Respondent's evidence, nor offer any explanation as to how these alternative arrangements might have an impact on payability of service charges, or, more crucially, their ability to charge administration charges.

50. Whilst it is certainly the case that the lease provisions will generally take precedence, it is clear that the long term arrangements that have existed for residents have been allowed to override the terms of the lease, and there is no evidence that at any point in time either the Applicant, or its appointed managing agents Watson, have written to leaseholders to advise that they intend to revert to the strict language of the lease, and forgo arrangements that have lasted, in the Respondent's case, for the duration of his lease – a period in excess of twenty years.

51. The Applicant's agent Watson has not itself adhered to the language of the lease. Presumably for its own administrative convenience, it has demanded Ground Rent once a year, in advance, and not on the due dates. The Respondent has paid without protest.

52. Similarly the Respondent paid several months in advance for works carried out to the roof, on demand (rather than adjustment to the estimated service charge as envisaged by clause 8.2).

53. It is accepted by both parties that the Respondent has paid the Service Charges due, having paid one –twelfth of the annual amount each month. When this arrangement had been in place for several years, without issue, the only change in the arrangements leading to this application, has been the managing agents and their stance on accounting for service charges and arrears.

54. This is a small scheme of ten properties, with the ten leaseholders all having a share in the Applicant. If there had been major issues with the arrears, leading to the need to alter the arrangements and take a more robust approach towards recovery, the Tribunal would expect to have seen evidence of this, by way of correspondence to all leaseholders, minutes from AGMs, and individual correspondence to the Respondent making it clear that previous arrangements were to change and that administration charges would be payable.

55. The Applicant has failed to respond to the Applicants evidence of the long standing arrangements. There is no evidence from any Director of the Applicant indicating they were instructing Watson to alter existing custom and practice; indeed the Respondent suggested in his evidence that one Director was not even aware of the current proceedings, and that suggestion was not rebutted by the Applicant. There is no evidence to suggest that the Applicant had changed the arrangements at all.

56. The Tribunal finds in those circumstances the only organisation that stood to gain, by imposing administration charges, was Watson itself, who was issuing the invoices, and would presumably retain the proceeds. There was no indication that the Respondent, having been a leaseholder since the scheme started, was not going to pay his service charges, given he paid regularly, paid up front for major works, and paid his ground rent when requested, before in fact the Applicant was entitled to receive it. The proceedings appear to have been caused by Watson's accounting

procedures, as opposed to their properly understanding the small scheme they were managing.

57. In the circumstances, when the question for the Tribunal is whether the administrative charges are payable, or reasonable, the Tribunal finds that given the arrangements that existed between the parties prior to the involvement of Watson, and the failure to communicate that such arrangements were to change, the administration charges are neither payable, (because it is not clear on the evidence that the Respondent was in breach of his lease) nor reasonable because of how the situation was managed.

58. The Applicant's charging an administration fee for seeking payment from Halifax, the Respondent's mortgagee was particularly unreasonable. The Applicant's solicitors suggestion that it was appropriate, to warn a mortgagee of a possible forfeiture was disingenuous. s167 Commonhold and Leasehold Reform Act 2002 was introduced to prevent freeholders recovering disputed charges directly from lenders on threat of forfeiture, thereby effectively undermining leaseholders practical ability to dispute charges. Despite the provision having been in force for almost twenty years, many institutions will still (erroneously) pay upon request for ill-founded fear of forfeiture. Given the statute requires an admission by the leaseholder or a Court judgement before forfeiture can be sought, forfeiture, for a sum of a few hundred pounds of obviously disputed charges, was some way off. It seems clear, as the Applicant suggests that Watson's motivation was to obtain payment "by the back door" when they know, or ought to know the legal position. To seek to charge the Respondent an administration fee for this practice is to add insult to injury.

**Counterclaim**

59. The Applicant queries the Tribunals' jurisdiction to deal with a counterclaim. The Tribunal can in appropriate circumstances consider setting off any sums found due in respect of a counterclaim against service charges or administration charges sought, when considering pursuant to s19 Landlord and Tenant Act 1985 whether those charges are payable and/or reasonable.

60. In this case as the Tribunal finds no service charges or administration charges are payable by the Respondent, and in those circumstances the Applicant is correct that the Tribunal has no jurisdiction to determine the counterclaim.

61. The Respondent's counterclaim is therefore remitted back to the County Court for determination.

## S20c Application

62. Given that the Tribunal finds these proceedings to have been brought entirely without merit, it is appropriate to make an order under s20c of the Landlord and Tenant Act 1985, that the costs arising and associated with these proceedings shall not be regarded as relevant costs in determining the amount of any service charges payable by the Respondent.

**John Murray**
**Tribunal Judge**
3 September 2020