



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

Case reference : **CAM/22UN/LSC/2020/0020**

**HMCTS code
(paper, video,
audio)** : **A:AUDIO on 11 December 2020**

Properties : **22, 25 & 26 Weavers Court, Stour Street,
Bathside, Harwich, Essex CO12 3JD**

Applicants : **Glenis O'Connell (Flat 22)
Carol Walker (Flats 25 & 26)**

Representative : **In person**

Respondent : **Weavers Court Harwich Limited**

Representative : **Raymond Padfield-Krala, Director**

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

Tribunal : **Judge N Hawkes
Mr S Moll FRICS**

Date of decision : **16 December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing which has been consented to by the parties. The form of remote hearing was A:BT MEETME. A face-to-face hearing was not held because it was not practicable. The documents that the Tribunal was referred to are in a bundle of 235 pages, together with a separate copy of a specimen lease, and two short supplementary bundles of documents, and additional digital bundles, the contents of which we have noted. The order made is described below.

Decisions of the Tribunal

- (1) Weavers Court Harwich Limited is substituted for Raymond Padfield-Krala as the Respondent to this application.
- (2) The Tribunal finds that the service charges which form the subject matter of this application are not payable by the Applicants to the Respondent.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges which are payable by the Applicants in respect of service charges from 2010 onwards.
2. Directions were given on 11 June 2020 leading up to a final hearing. The issues identified at paragraph (8) of these Directions included:

“whether the respondent landlord was/is entitled to demand service charges (since this seems under the draft form of lease to be a matter for the separate management company, Stour Street (Harwich) Management Company Limited, which does not seem to exist)”
3. The application first came before this Tribunal on 29 September 2020 when further Directions were given. These further Directions record that:
 - (3) The starting point for the Tribunal’s determination is the terms of the Applicants’ leases. The Tribunal will have to be satisfied that, under the terms of the leases, the service charges are payable to the party seeking to recover them.
 - (4) The Tribunal has been provided with a specimen lease (“the Lease”).
 - (5) There are three separate parties to the Lease, the Lessor, the Lessee, and the Management Company.
 - (6) By the Fifth Schedule to the Lease, “*The Maintenance Expenses*” are (emphasis supplied):

“Moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company”

- (7) Paragraph 2 of the Sixth Schedule to the Lease provides (emphasis supplied):

“The Lessee shall pay his Maintenance Contribution to the Management Company in the manner following”

- (8) The Applicants referred the Tribunal to Paragraph 25 of Part Two of the Seventh Schedule to the Lease (covenants by the lessee) by which the lessee covenants:

“Not to assign the Demised Premises without contemporaneously transferring to the assignee the Lessee’s share in the Management Company and delivering to the assignee the Lessee’s certificate in respect of such share and the assignee shall deliver such transfer to the Management Company for registration duly executed and stamped together with the share certificate.”

- (9) The Applicants state that they have requested share certificates but that these have not been received.

- (10) Mr Padfield-Krala states that the Management Company became insolvent and was wound up. The Applicants state that the Management Company was never set up.

- (11) Mr Padfield-Krala initially informed the Tribunal he was the freehold owner of Weavers Court and the landlord but he then stated that Weavers Court Harwich Limited, a company of which he is Director, is in fact the registered freehold proprietor of Weavers Court.

- (12) All parties agreed that the hearing should be adjourned with further directions, to enable these matters to be clarified, and Mr Padfield-Krala indicated that he will seek independent legal advice.

4. Further Directions were given which made provision for Mr Padfield-Krala to serve a Supplemental Statement of Case (together with evidence in support) setting out the basis upon which he asserts that he is entitled to receive payment of service charges under the terms of the Lease when the Lease provides for the Applicants’ payments to be made to the Management Company.

5. A number of matters were specified which the supplemental Statement of Case should address. These included the identity of current freehold owner and landlord of Weavers Court in order that consideration could be given to substituting Weavers Court Harwich Limited for Mr Padfield-Krala as Respondent. Mr Padfield-Krala was asked to produce an official copy of the Register of Title. There was also provision for the Applicants to file submissions and evidence in reply.

6. The application was re-listed for a further audio hearing on 11 December 2020.

The hearing

7. The Applicants and Mr Padfield-Krala attended the hearing in person. Mr Padfield-Krala was accompanied by Mr Stuart Coe from Scott and Stapleton, the managing agents who are currently managing Weavers Court. The Tribunal was informed that these managing agents were proposed by the Applicants.

The Tribunal's determinations

8. The official copy of the Register of Title records that Weavers Court Harwich Limited rather than Mr Padfield-Krala is the freehold owner of Weavers Court. Accordingly, the Tribunal substituted Weavers Court Harwich Limited for Mr Padfield-Krala as Respondent to this application.
9. In his supplemental Statement of Case, Mr Padfield-Krala stated that the Management Company was dissolved on 24 March 2009, before the Respondent became the freehold owner of Weavers Court, and he produced evidence Companies House to this effect.
10. Mr Padfield-Krala submitted that, the Management Company having been dissolved, the service charges are payable to the Respondent landlord. He stated that the Applicants had agreed to this (evidenced by payments they have made) and that the Applicants were only disputing the reasonableness of the charges.
11. The Applicants have provided the Tribunal with a copy of a letter dated 16 March 2020 which was written to Mr Padfield-Krala by a solicitor who was acting on their behalf. The Applicants' solicitor stated:

"... we are informed that you are the present freeholder in the particular properties and the shareholder in the management company, Weavers Court Harwich Limited.

Our clients remain concerned that, notwithstanding the purchase of the respective properties, they have still to receive share certificates in respect of their shareholding in the aforesaid management company. They insist that the share certificates are issued forthwith..."

12. Further, in their application to this Tribunal, the Applicants stated that they had repeatedly asked for the share certificates. The Tribunal is not satisfied it can be inferred the Applicants knew that the Management Company had ceased to exist and had agreed that the Respondent could

take its place when the Applicants clearly still considered that they held shares in the Management Company.

13. Mr Padfield-Krala also submitted on behalf of the Respondent that the combined effect of sections 3 and 12 of the “1985 Act” is that, in circumstances where a management company has been dissolved and a lease fails to make express provision for a landlord to step in, the landlord may replace the management company “without needing to take further action”.
14. In response to questions from the Tribunal, Mr Padfield-Krala agreed that he had intended to refer to the Landlord and Tenant (Covenants) Act 1995 (“the 1995 Act”) rather than to the “1985 Act”. He was unable to explain why he was contending that sections 3 and 12 of the 1995 Act related to a situation in which a management company had been dissolved. He is not legally qualified and his legal submission was based on “comments” received from solicitors who were not present at the hearing.
15. The Tribunal is satisfied that it must apply the Supreme Court decision of *Arnold v Britton* [2015] UKSC 36 when interpreting the Lease and notes, in particular, paragraphs 15 to 26 of the judgment.
16. Accordingly, the Tribunal has considered the ordinary and natural meaning of the relevant clauses of the Lease and has assessed their meaning in light of the factors specified in *Arnold v Britton*, including other relevant provisions of the Lease. The Tribunal notes that the clearer the natural meaning of the words, the more difficult it is to justify departing from it (paragraph 18). Further, the Tribunal notes that:

The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.
17. The Tribunal also notes, if an event occurs which was plainly not intended or contemplated by the parties, “if it is clear what the parties would have intended” the Tribunal can give effect to that intention (paragraph 22).
18. In the present case, the wording of the relevant covenants is not ambiguous. Clause 2 of the Sixth Schedule provides that: “*The Lessee shall pay his Maintenance Contribution to the Management Company in the following manner*”. There is no provision for the Maintenance Contribution to be paid to the Landlord or for the Landlord to replace the Management Company should the Management Company cease to exist.

19. Other clauses in the Lease are not consistent with an intention for the Landlord to be substituted for the Management Company. By Part Two of the Seventh Schedule to the Lease, clause 25, the lessee covenants:

“Not to assign the Demised Premises without contemporaneously transferring to the assignee the Lessee’s share in the Management Company and delivering to the assignee the Lessee’s certificate in respect of such share and the assignee shall deliver such transfer to the Management Company for registration duly executed and stamped together with the share certificate.”

20. If the Landlord were simply substituted for the Management Company, it would be impossible for the Applicants to comply with this covenant because they do not have shares in the Landlord, Weavers Court Harwich Limited. The Applicants are concerned that their flats may currently be unsellable by virtue of this provision.
21. By clause 19 of the Fifth Schedule to the Lease, the maintenance expenses include the costs of administering the Management Company (a company in which the leases are to hold shares). It would be a very different proposition to require the lessees to pay the costs of administering Weavers Court Harwich Limited, a property holding company in which they do not hold shares.
22. Having considered the wording of the Lease in its entirety, the Tribunal is not satisfied it is clear that the parties would have intended the Landlord to be simply substituted for the Management Company in the event of the Management Company being dissolved. The Tribunal is mindful of the limits of its jurisdiction under section 27A of 1985 Act. The Tribunal has no power under section 27A of the 1985 Act to re-write the Lease in an attempt to assist the parties. Having carefully considered the ordinary and natural meaning of the relevant clauses, we are not satisfied that the disputed service charges are payable by the Applicants to the Respondent.
23. Mr Padfield-Krala indicated that the Respondent intends to make an application for the leases to be retrospectively varied and there was some discussion, at the conclusion of the hearing, concerning the possibility of agreeing a lease variation and other matters. Whilst the Tribunal hopes that constructive settlement negotiations will take place, the Tribunal clearly cannot comment or advise the parties and we suggested that all parties consider taking independent legal advice. The Applicants and the Tribunal were informed that the Respondent will not seek to recover any costs of these Tribunal proceedings from the Applicants.

Name: Judge N Hawkes

Date: 16 December 2020

NOTES

- (a) Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email.**
- (b) If the applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).**
- (c) If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**