



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

Case reference : **LON/00BK/LSC/2021/0121**

**HMCTS code
(paper, video,
audio)** : **V: VIDEOREMOTE**

Property : **Flat 15 & Flat 39 Imperial Court, 55-56
Prince Albert Road, London NW8 7PT**

Applicants : **Imperial Court (Regents Park) Limited**

Representative : **Mr Tim Hammond, counsel instructed
by Freemans Solicitors**

Respondent : **(1) Reena Dhir (Flat 15)
(2) Lou Holdings Limited (Flat 39)**

Representative : **Dr D R Dhir (for both applicants)**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mrs Sarah Redmond MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **2 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing [on the papers which was not objected to by the parties. The form of remote hearing was V: VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundles of 1-1882 and 1-578 pages, the contents of which the tribunal has taken into consideration.

Decisions of the tribunal

- (1) The tribunal determines that all sums demanded by the applicant in respect of service charges for the years 2017/18; 2018/19; 2019/20 and 2021/22 are payable by the respondents.
- (2) The tribunal determines it is reasonable and appropriate to grant the applicant dispensation under section 20ZA in respect of the works of carried out to Flat 1 arising out of water damage.
- (3) The tribunal determines that section 21A of the Landlord and Tenant Act 1985 does not apply to any of the agreements entered into by the applicant in respect of the provision of services.
- (4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charges.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to the amount of service charges payable by the respondents in respect of the service charge years 2017/18 to 2021/22.

The hearing

2. The applicant was represented by Mr T Hammond of counsel at the hearing and the respondent were represented by Dr D R Dhir. Mr David Martin a director of the second respondent company and occupier of Flat 39, also attended the video hearing, although he indicated to the tribunal, he adopted the first respondent's positions.
3. Immediately prior to the hearing the respondents requested an adjournment of the hearing. Dr Dhir stated he had been led to believe the hearing would not go ahead, until the Upper tribunal had made a

decision on his application for permission to appeal the tribunal's decision, refusing the respondents' request for a summons to compel the attendance of certain directors of the applicant company. As the refusal of his application had only been communicated to him the evening before the hearing, Dr Dhir stated he did not believe he had to prepare for it despite having been informed previously by the First-tier tribunal that the hearing would be going ahead.

4. The tribunal refused the respondents' request to adjourn the hearing as at no time had Dr Dhir been informed that it would not be going ahead, and that it was unreasonable for him to assume that it would be postponed.

The background

5. The property which is the subject of this application comprise two flats in a purpose-built block of 40 flats circa 1970's.
6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection, and the tribunal did not consider that one was necessary or appropriate in light of the ongoing restrictions due to COVID-19.
7. The respondents hold a long lease of their respective properties which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the years 2017/18; 2018/19; 2019/20; 2020/21 and 2021/22.
 - (ii) Whether section 21A of the Landlord and Tenant Act 1985 applied to any contracts entered into by the applicant in respect of the provision of services.
 - (iii) Whether dispensation under section 20ZA of the Landlord and Tenant Act 1985 in respect of works carried out in Flat 1 in 2019/20.
9. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges 2017/2018

10. The tribunal finds that the service charges claimed in respect of Flat 39 in the sum of £6,784.47 are reasonable and payable.

Service charges 2018/2019

11. The tribunal finds that the service charges in respect of Flat 15 in the sum of £6,755.39 and Flat 39 in the sum of £9,307.08 are reasonable and payable.

Service charges 2019/2020

12. The tribunal finds that the service charges in respect of Flat 15 in the sum of £23,369.39 and Flat 39 in the sum of £15,574.82 are reasonable and payable.

Service charges 2020/2021

13. The tribunal finds that the service charges in respect of Flat 15 in the sum of £15,177.12 and Flat 39 in the sum of £10,095.50 are reasonable and payable.

Service charges 2021/2022

14. The tribunal finds the service charges in respect of Flat 15 in the sum of £8,721.85 and Flat 39 in the sum of £5,801.59 are reasonable and payable.

Reasons for the tribunal's decision

15. In seeking to dispute the payability of the service charges claimed by the applicant, the respondent sought to rely on extensive arguments in respect of allegations of multiple breaches of fiduciary and sought to rely upon an unquantified counterclaim in respect of these breaches of fiduciary duty. However, these matters were not considered by the tribunal as it had no jurisdiction to do so.
16. Issues raised by the respondents that were within the jurisdiction of the tribunal concerned:
 - (i) Whether the respondents had been provided with proper and timely accounts of the service charges in accordance with s21 of

the 1985 Act and the terms of the lease and can rely on s21A(1)(a) to withhold payment of service charges?

- (ii) Whether there was a failure by the applicant to comply with s20 of the 1985 Act in respect of the appointment of Symon Smith & Partners (SSP) as managing agents?
 - (iii) Whether there was a failure by the applicant to comply with s20 of the 1985 Act in respect of works carried out to Flat 1?
 - (iv) Whether certain items of service charges should be charges to the individual leaseholders as per the respondents' schedule?
 - (v) Whether the payments made to the previous head porter Mr Oliver in respect of his resignation are properly payable as service charges?
17. The respondents asserted that as a result of the Applicants failure to comply with sections 20 and 21 of the 1985 they were entitled to withhold payment of the service charges demanded.
18. In addition to the extensive documentation relied upon by the applicant, the tribunal heard oral evidence from Mr Ganesh Khatri who spoke to his witness statement dated 13 August 2021. The respondents relied upon their own bundle of documents and the oral evidence of Mr Mick Oliver who had been the subject of a summons date 24 August 2021 issued by the tribunal at the request of the respondents.
19. The tribunal preferred the evidence relied upon by the applicant which it found comprehensive, to the muddled evidence of the respondents.
20. The tribunal does not accept that the respondents are able to rely upon ss21 and 21A(1)(a) of the 1985 to withhold payment of service charges as the latter section is not yet in force. Further, the tribunal finds that the respondents were unable to demonstrate that any request for the provision of a summary of relevant costs had been made to the applicant.
21. The tribunal finds that the applicant provided the respondents with Accounts in compliance with the terms of the lease. In any event, had there been such a failure, the tribunal determines this did not entitle the respondents to withhold payment of service charges.
22. The tribunal finds that there was no requirement for the applicant to consult with the dismissal/resignation of and payments made to Mr Mick Oliver and the appointment of SSP as managing agents, as neither

concerned qualifying long-term agreements under s20ZA(2) of the 1985 Act.

23. The tribunal finds the fees of the managing agent SSP are reasonable and payable.
24. The tribunal finds that the respondents have failed to demonstrate any prejudice caused as a result of works being carried out to Flat 1 as a result of extensive water damage caused by a leak from a communal pipe. Therefore, the tribunal considers it reasonable and appropriate in all the circumstances to grant dispensation to the applicant in respect of these works and the associated charges under s20ZA of the 1985 Act.

Application under s.20C

25. The Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that no order is to be made under section 20C of the 1985 Act, so that the Applicant may pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Tagliavini

Date: 2 November 2021

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).