FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CX/LSC/2019/0051-56**
Property	**:**	**10,20,22,26,28 and 30 Bewick Court Clayton Heights Bradford BD6 3XF**
Applicant	**:**	**Beazer Homes Limited**
Representative		**Ms. Ackerley**
Respondent	**:**	**(1) Mr Nimesh Naranbhai Patel** **(2) Ms Wendy Elizabeth Lawrence** **(3) Ms Eileen Margaret Broster** **(4) Ms Annette Louise Cockfield** **(5) Mr Alan Mark Jones** **(6) Mr Mark Harold Wilkinson**
Representative		**Mr Willoughby**
Type of Application	**:**	**Section 19, 27A and s20C Landlord and Tenant Act 1985** **Commonhold and Leasehold Reform Act 2002 - Sch 11 para 5**
Tribunal Members	**:**	**Mr John Murray LLB** **Mr John Faulkner FRICS**
Date of Decision	**:**	**12 January 2022**

DECISION

DECISION

The service charges payable by each Respondent for the service charge years under review are as follows:

- Year ending 30 September 2011 nil
- Year ending 30 September 2012 nil
- Year ending 30 September 2013 nil
- Year ending 30 September 2014 £361.08
- Year ending 30 September 2015 £362.20
- Year ending 30 September 2016 £361.45

INTRODUCTION

1. The Tribunal heard this application on the 26 April 2021 but was unable to make a final determination without affording the parties the opportunity to provide submissions and evidence on the issue of whether s20B Landlord and Tenant Act 1985 had an impact on the application, the Tribunal having raised the subject of its own volition.

2. The Tribunal made directions for the parties to file further statements of case and evidence in support in relation to this discrete point to enable a final determination to be made.

3. The Applicant filed a second statement of case signed by solicitor Helen Clutterbuck (9th August 2021) along with witness statements from Kirsty Anderson, Regional Manager for Trinity Estates (5th August 2021), and Tara Taylor, inhouse solicitor for Trinity Estates (12th July 2021).

4. The Respondents filed a second statement of response (6th September 2021).

5. The Tribunal reconvened to consider the matter on the papers alone.

SUBMISSIONS FOR THE APPLICANT

6. The Applicant asserted that the crux of the Respondent's pleaded case was that the Respondents throughout the proceedings had maintained that they had paid the service charges due to Trinity, (as agents for the Applicant), to McDonald throughout, not that they had not been served correctly with the demands. The Applicant asserted that the demands had been properly served

and in accordance with the requirements of s20 B Landlord and Tenant Act as evidenced by the witness statements of Ms Taylor and Ms Anderson.

7. The Statement of Case reiterated the background, how the responsibilities of the Applicant in relation to the block and the estate services were split between Trinity and McDonald, with the former providing the estate services, and McDonald the block services. Trinity had commenced management of the estate from 1 January 2007.

8. At Annex D of their statement of case, the Applicant produced a copy of a letter dated 4 January 2007 from Wendy Lawrence of Trinity which confirmed her agreement that McDonald Partnership might incorporate Trinity charges with McDonald charges and for leaseholders to pay McDonald directly.

9. The Applicant asserted that demands, budgets and accounts had been served on McDonald until 2015. It was common ground that McDonald were acting as agents for the six Respondents, who had agreed in writing (attached at Annex D of the Applicant's statement of case) that the former might collect the service charge monies for the estate costs and then reimburse Trinity. In 2015 arrangements changed and demands were sent directly to individual leaseholders after McDonald had failed to pass monies on.

10. They further asserted that at all times, the objection put forward by the Respondents in correspondence from their solicitors or in their defence, was that service charges had been paid over to McDonald – "as previously demanded" – and that they had made no reference to not receiving demands.

11. The letters to Trinity from McDonald dated 15 December 2006, 5 January 2007 and 23 January 2007 recorded Trinity's address as 916 Eccleshall Road Banner Cross Sheffield S11 8TR. Demands were sent to this address until around April 2013. The demands produced in evidence however could only show the last address for the Respondents, as the system did not hold historic information. Evidence was given in the Applicant's witness statements as to which addresses the demands were sent to.

12. At paragraph 16 of the statement of case the Applicant said that Trinity were correct to send demands to the Respondents at the 916 Eccleshall Road address until about April of 2013 which is when Trinity say they became aware of the change of address.

13. Kirsty Anderson exhibited a copy of a letter originally sent to McDonald by her on 2 April 2014, a year after she says she first became aware that McDonald had changed address. She apologises in that letter for not fully responding to the letter McDonald sent in April of 2013. She says that they had no record of receiving notification of the change of address or would have updated their system.

14. She went on to explain how Trinity had been sending yearly budgets and year end accounts to the address held on record for McDonald (the old address). She said that in 2009 she had been in email contact to provide electronic statements; referring to Ms Cockfield's statements. She said that they were in communication with" Nikki in the accounts department" in early 2009 to reconcile the cheque payments they were receiving, and supplied via email up to date statements for "the properties in question! In October 2008. She attached copies of the year end accounts for McDonald's records.

15. The Applicant asserted that earlier correspondence had been received by McDonald in any event; the Applicant referred to correspondence to Ms. Lawrence between February 2008 and 2013 being received by Ms. Lawrence as it was disclosed in the Respondent's witness statement. Mr. Jones had stated in evidence at the hearing that he had received all demands, accounts and budgets from McDonald; in the Applicant's view McDonald must have received demands or they would not have continued to pay service charges, which they did until 2010.

16. Trinity stated that they had (also) been sending documents to McDonald electronically. In 2009 they had communicated with the accounts department at McDonald to reconcile payments and supplied up dated statements for the properties in 2009, as well as sending all year end accounts in 2014, and dealing with other miscellaneous matters.

17. Letters sent by Trinity from 2013 were sent to individual leaseholders c/o the McDonald Partnership, Robert House, Unit 7 Business Centre, Woodseats Close Sheffield S8 0TB. They also made reference to the possibility of electing to receive communications by email via their "Residents Portal", although this required leaseholders to "opt in".

18. The Applicant produced evidence in their Appendices to the statement of case as to documentation provided to McDonald and the Respondents.

19. At paragraph 29 of the statement of case, the Applicant confirmed the service charge budgets produced each year, showing individual service charges for each year ranging between £356.56 to £362.50. At paragraph 30 they referred to the invoices for maintenance of landscaping, lawn bushes and paving with HGM Services, and included at tabs 29 to 34 of the bundle.

20. At paragraph 34 the Applicants produced details of where all demands had been sent for the period in question in relation to each Respondent which was to McDonald (at two addresses) until 2015 and thereafter to each individual.

21. In summary the Applicant submitted that the Applicant had complied with the requirements of Section 20B and all demands served in accordance with prevailing instructions at the pertinent times, and in advance of costs being

incurred (in accordance with the lease) and therefore within 18 months of the costs being incurred.

SUBMISSIONS FOR THE RESPONDENTS

22. The Respondents averred that the '18 month rule' imposed by s.20B of the Landlord and Tenant Act 1985 would prohibit the Applicant from recovering the service charges with which these proceedings are concerned; they made this submission without prejudice to their case asserted at the final hearing.

23. The Respondents asserted that the Applicant was unable to evidence that the demands were served within the 18-month period of costs being incurred, or that the tenants were otherwise 'notified in writing'.

24. The Respondents reiterated the arrangements between the Applicant and the management companies McDonald and Trinity, and asserted that Trinity had for the period in question, failed to raise demands on McDonald between McDonald's change of address in or around 2008 until 2013, and that as a consequence, the demands fell foul of s.20B of the Act. The Respondents were not otherwise 'notified in writing'.

25. McDonald had moved from 916 Eccleshall Road, Banner Cross, Sheffield S11 8TR to Robert House, Unit 7 Business Centre, Woodseats Close, Sheffield. The Respondents submitted that Trinity had been notified of the change of address in 2007, as referred to in the correspondence between McDonald and Trinity of 15 April 2013. The Applicant's witness called at trial was unable to assist as to: (i) the notice of change of address; and (ii) action (or otherwise) taken in response to such a notice.

26. The Respondent stated that if the Applicant sought to rely on further evidence on such an issue, the Respondents should have the opportunity to challenge any such evidence.

27. The Respondents asserted that the address was only corrected upon the purported demands reaching the stage of 'final demand', in their submission, at the earliest, on 10 April 2013 [p 227 of the Bundle] which created an 18 month delay.

28. By April 2013, more than 18 months had passed in which Trinity had not properly raised demands for payments due. The Respondent submitted that the Applicant's assertion that it was reasonable for Trinity to have sent demands to the McDonald Partnership at the Eccleshall Road address should fail, given:

    (a) It was notified of the change of address at the time of that change (see letter 15 April 2013 confirming the same and Annexe E of the Applicant's second statement of case);

(b) The registered address of McDonald changed at the time it notified Trinity which was reasonably discoverable by Trinity;

(c) No further queries were made by Trinity when it purports to have raised demands without payments of McDonald; and

(d) No notification of unsatisfied demands were notified to the tenants at the material time and within such period specified by s.20B of the Act.

29. In short, Trinity seeks to pass its own error of failing to record the change of address onto the Respondents. The Respondents cannot be held liable for the failure of Trinity to:

(a) Take action to change the new address of McDonald in respect of which it had been notified;

(b) Take steps in ascertaining the registered address of McDonald.

30. In circumstances where documents have been sent to the former McDonald address and have purportedly been 'received' by any of the Respondents, the Respondents aver:

(a) It is by no means clear from the Applicant's Second Statement of Case which forms of communication were used to convey such information. Whilst the Applicant avers such documents were sent to the former address, it is by no means clear that the only form of communication used was post (Trinity and McDonald were certainly in email communication but demands were only raised via post);

(b) The Applicants have failed to disclose evidence of its internal management systems showing that such correspondence was sent only by post to the former McDonald address and was consequently received by McDonald at its former address; and

(c) The Respondents did not have the benefit of calling witnesses (or adducing evidence, for that matter) from McDonald given the latter merger with Trinity.

31. The Applicant further asserted that the demands rendered and sent to the Applicants directly after the merger of Trinity and McDonald were not supported by accounting evidence of either company, and on cross examination Mr Barraclough could not say whether such reconciliation had taken place.

32. In conclusion, the Respondent asserted that the Applicant was unable to discharge the burden of evidence that demands had been sent in compliance with s.20B of the Act for want of any clear and reliable evidence that they had been sent to the correct address.

Judgement

33. The Applicant correctly referred the Tribunal to the authority of Birmingham City Council and Keddie [2012] UKUT 323 when the Tribunal raised the issue of s20B. Subject to the principles of natural justice and affording the parties the opportunity to address the point by submissions and evidence on the point, the Tribunal is perfectly entitled to raise matters of its own volition, as HHJ Mole QC reminded us in Regent Management Limited v Jones [2012] UKUT 369 (LC).

34. Whilst such cases might be rare, in the present case the Respondents asserted that they had paid all they had been asked to pay by McDonald Partnership who was supposed in receipt of both demands from the Applicant and their monies, and who between 2008 and 2015 effectively ended up as "the middleman" between Trinity and the Respondents, although of course the contractual relationship between the parties continued.

35. Whilst not explicitly pleaded, McDonald had made it clear (inter alia) in their letter to Trinity dated 15 April 2013 (P229 of the Bundle) that no correct invoices had been sent, and that their clients had no responsibility under the Landlord and Tenant Act to make payment. McDonald were clearly challenging that lawful demands had not been sent. This in itself gave rise to a query as to whether s20B (as well as other statutory provisions) had been complied with.

36. The Tribunal has now been provided with substantial submissions and evidence on this point. The Applicant confirmed that demands were sent to the Ecclesall Road address, (which had not been in use for several years), as they claimed to be unaware of McDonald's change of address until on or after 15 April of 2013. They maintained this despite all correspondence in the bundle from McDonald after January 2008 being from the Acord Business Park address.

37. Whilst Mr. McDonald may not have been accurate when he referred to a six year period, it was certainly more than five years and the tone of his correspondence suggests he was clearly frustrated by Trinity's failure to send correspondence to the correct address which he said he had given them when he moved. It is difficult to understand how two organisations jointly managing an estate could operate where one party is sending documentation to an address that had not been used for over half a decade.

38. The Tribunal notes that certain documents sent to the Ecclesall Road address during this period did appear in the Respondent's documentation, for instance the credit note of Ms. Lawrence dated 15 February 2008. That does not however demonstrate when it was received, let alone that other paperwork, and importantly the demands for payment, were received, when the Applicant admits they were being (automatically) sent to an out of date address.

39. Whilst the Tribunal heard evidence from Mr. Jones at the hearing that he had been provided with all demands, accounts and budgets from McDonald; he did not go into detail as to what years he received them for, or indeed when he received them. He believed he had paid all that he had to pay which suggests he only saw demands from McDonald, and not the incorporated charges for Trinity as Mr. McDonald objected to these charges on behalf of his clients. The Tribunal is not able to infer from this evidence that the letter dated 15 April 2013 (that McDonald had received no accounts for several years) was in any way inaccurate.

40. That letter elicited no response from Trinity as the letter dated 14 June 2013 from McDonald confirms this.

41. McDonald was still seeking clarification from Trinity on 17 September 2013 and telling the leaseholders that they were not obliged to pay.

42. Whether the mistake (in relation to the address) was made by Trinity, or by McDonald is perhaps of less importance now those two organisations have been merged as one for a period in excess of seven years.

43. What is clear is that none of this dispute was the fault of any of the Respondents who paid everything asked of them by McDonald, and were repeatedly assured by McDonald they would have nothing else to pay, as monies were being "ringfenced" for any costs that subsequently proved payable.

44. It would not be unreasonable for the Respondents to assume, or even hope, that having acquired McDonald in January 2015 Trinity would take the opportunity, perhaps as part of a due diligence exercise to review the objections that McDonald had made on behalf of their clients, and reconcile the accounts. It is clear from the evidence of Mr. Barraclough, and the documentation the Tribunal has seen, that this never happened; the objections of McDonald were simply ignored, and melted away, leaving the Respondents prey to the machinations of the Applicant's credit control system.

45. The Respondents have, with legal support at no doubt unexpected and unwelcome expense to themselves, endeavoured to unravel the true situation over a period of many years, but to no avail. The Respondents solicitor unsurprisingly considered that the Applicant would be in a position to clarify the situation given they now had access to records of both agents – who on the evidence the Tribunal were shown were the source of the dispute.

46. An email from Rachel Squires, a solicitor in the employ of the Applicant's parent company Persimmon dated 9 May 2016 to Adrian Green of the Applicant's solicitors stated that she had "never heard" of the McDonald Partnership. Even at that stage, the Applicant's in house lawyer was failing to understand let alone address the situation – the Applicant had appointed the McDonald Partnership at the inception of the scheme, and they had been

involved throughout until they were taken over by Trinity, who continue to manage the estate.

47. Having considered in detail the evidence and submissions from both parties, on this point the Tribunal concludes that on the balance of probabilities the requirements of s20B have not been met until April of 2013 when the Applicant changed the McDonald address on their system. Until that date the Tribunal has no evidence

48. The earliest that the Respondents received paperwork at the correct address was consequently in September of 2013, when service charge budgets and payment requests were delivered for the service charge year ending 30 September 2013.

49. There is no evidence that paperwork was sent to the correct address for the Respondents, or received by them for the years ending 30th September 2011, 2012 and 2013. There is no evidence that the Respondents received these demands within the statutory 18 month period.

50. This application having started in the County Court but having been referred to the Tribunal, the questions the Tribunal is required to answer therefore are:

(a) Are the service charges sought for the years 2010 to 2016 reasonable and payable under s27A Landlord and Tenant Act 1985?

(b) Are the administration charges sought against the Respondents reasonable and payable under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002?

(c) Should an order under section 20C of the Landlord and Tenant Act 1985 be made in relation to the costs of these proceedings.

(a) Service charges

51. The Tribunal finds that service charges raised prior to 30 September 2013 are irrecoverable from the Respondents by virtue of s20B Landlord and Tenant Act 1985 because there is no evidence demands were sent to the Respondents until September of 2013 and those demands were for the following year.

52. The Tribunal finds that for service charges after these dates that there is no particular dispute that the works were carried out or the services provided, no particular dispute with the quality or the cost of the works and services, and invoices and statutory demands were produced in evidence and were sent to the correct addresses for the Respondents. The Service charges sought for the years ending 2014, 2015, and 2016 are reasonable and payable by the Respondents.

(b) Administration charges

53. The Tribunal does not find administration charges sought against the Respondents are reasonable and payable because the Applicant had failed to address the dispute with McDonald raised on behalf of the leaseholders. The funds had apparently been "ringfenced" to pay Trinity, but even now some seven years after the merger of Trinity and McDonald, the Tribunal was told no reconciliation had taken place.

(c) Costs

54. The Tribunal is conscious that the costs of these proceedings are likely to substantially outweigh the original sums in dispute.

55. The Tribunal invites the parties to make submissions in writing as to costs and in particular as to whether an order under s20C should be made to prevent the Applicant from adding the costs of these proceedings to the service charge.

Tribunal Judge
John Murray

12 January 2022