



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

**Case Reference** : **LON/00AY/LSC/2021/0364**

**Property** : **Flat A, 4 Concanon Road,  
London SW2 5TA**

**Applicant** : **Simon Recordon (Executor of Estate of  
Juliet Otto)**

**Representative** : **Ms Lucinda Cookson**

**Respondent** : **Assethold Ltd**

**Representative** : **Mr Ronni Gurvits, Eagerstates Ltd**

**Type of  
Application** : **Service charges**

**Tribunal Members** : **Judge Nicol  
Mr B Bourne MRICS**

**Date and venue of  
Hearing** : **5<sup>th</sup> September 2022;  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **3<sup>rd</sup> November 2022**

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**DECISION**

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- (1) Service charges in the sum of £146.28 for the year 2016 are not payable by the Applicant to the Respondent.
- (2) None of the service charges for the year 2017 are payable by the Applicant to the Respondent.
- (3) None of the administration charges challenged in these proceedings are payable by the Applicant to the Respondent.

- (4) The Respondent may not recover their costs of these proceedings from the service charge under section 20C of the Landlord and Tenant Act 1985 or as an administration charge under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The relevant legal provisions are set out in the Appendix to this decision.

### **The Tribunal's reasons**

1. The Applicant is the executor of the estate of the former leasehold owner of the subject property, one of three flats in a converted house. The Respondent is the freeholder.
2. The Applicant has applied for a determination as to the payability of service charges demanded in respect of the years ending in 2016 and 2017 under section 27A of the Landlord and Tenant Act 1985 ("the Act") and as to the payability of administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
3. The Tribunal heard the application on 5<sup>th</sup> September 2022. The attendees were Ms Lucinda Cookson for the Applicant and Mr Piers Harrison, counsel for the Respondent.
4. The documents considered by the Tribunal were contained in a bundle of 96 pages, in electronic form, prepared on behalf of the Applicant.
5. The history of the dispute is as follows. In October 2016 the 3 lessees acquired the right to manage the building, taking over from the Respondent's agents, Eagerstates Ltd.
6. In January 2017 Ms Juliet Otto, then the lessee of Flat A, died. The Applicant wrote to the Respondent notifying them of her death and seeking information as to whether there were any outstanding amounts owed. Neither the Respondent nor Eagerstates responded.
7. In 2019 Ms Emily Wright, the lessee of Flat B, and Dr Rosa Cookson, the lessee of Flat C, applied for a determination of the payability to the Respondent of their service charges for the same years, 2016 and 2017 (case ref: LON/00AY/LSC/2019/0127). The Applicant was named as an Interested Party but did not participate. The lack of communication from the Respondent had led him to think that no monies were owed by the estate or that the Respondent had no interest in chasing them.
8. The Tribunal issued its decision on 12<sup>th</sup> August 2019 but later reviewed it and issued another decision on 7<sup>th</sup> October 2019, revising the figures for the amounts determined as owing under various heads of service charges.
9. One of the applicants in that case, Dr Cookson, sought to appeal the decision. She was granted permission to appeal on one issue, namely whether the service charges for the year ending in 2017 were not payable by reason of section 20B of the Act.

10. By a decision dated 9<sup>th</sup> April 2020 (*Cookson v Assethold Ltd* [2020] UKUT 0115), the Lands Chamber of the Upper Tribunal held that no service charge demand had been issued within 18 months of the relevant expenses having been incurred, contrary to section 20B(1), and that there was no document which notified the lessees of the expenses in accordance with section 20B(2). The consequence was that the applicants owed no service charges for the year ending in 2017.
11. The Respondent applied the First Tier and Upper Tribunal decisions to the service charge accounts of both Ms Wright and Dr Cookson. However, Eagerstates on behalf of the Respondent sent to the Applicant a demand dated 22<sup>nd</sup> July 2020 for £5,236.15, including ground rent, service charges up to the handover date to the RTM company, and various administrative charges for expenses allegedly incurred in seeking payment.
12. On 23<sup>rd</sup> July 2021 the Respondent issued proceedings against the Applicant in the county court (claim no: 227MC647) for this sum. The Applicant responded on 10<sup>th</sup> August 2021, asserting that the ground rent had been paid and particulars were required for the balance of the claim. The Upper Tribunal decision was also mentioned. The Applicant further asserted that the requisite pre-action protocol had not been complied with.
13. By email dated 22<sup>nd</sup> December 2021, the court confirmed that the case had been stayed automatically on 13<sup>th</sup> September 2021 as they had not heard further from the Respondent.
14. On 4<sup>th</sup> October 2021 Ms Cookson made the current application to the Tribunal on behalf of the Applicant. At a case management hearing held by phone on 7<sup>th</sup> December 2021, Mr Gurvits of Eagerstates, acting on behalf of the Respondent, challenged the jurisdiction of the Tribunal on the basis that there were already ongoing county court proceedings. By a decision dated 18<sup>th</sup> January 2022 Judge Brilliant held that the court proceedings, not having concluded, were no bar to the Tribunal application. For what it's worth, the current Tribunal agrees with that decision and its reasoning. Judge Brilliant refused permission to appeal on 16<sup>th</sup> March 2022.
15. Judge Brilliant also issued directions with his decision of 18<sup>th</sup> January 2022. The Respondent did not comply with the first direction to provide service charge accounts, estimates and demands. On 11<sup>th</sup> February 2022 Judge Tagliavini ordered that, unless the Respondent complied by 21<sup>st</sup> February 2022, they were barred from taking further part in the current proceedings.
16. On 19<sup>th</sup> April 2022 Judge Bowers confirmed that the Respondent had still not complied and was, therefore, debarred. However, on 5<sup>th</sup> May 2022 Judge Bowers lifted the bar on the basis that the Respondent had been waiting for the decision on their application for permission to appeal. Amended directions were issued.

17. The Applicant complied with the directions by producing a bundle of documents for the Tribunal containing her statement of case, a schedule of disputed items and relevant documentation. It did not include any statement of case, response to the schedule or other documents from the Respondent because the Respondent had not provided any, in breach of the amended directions.
18. Instead, on the morning of the hearing, a Monday, the Tribunal was confronted with a document, "Opening Submissions for the Respondent", authored by Mr Harrison and dated the Friday before. It was a statement of case, not the kind of mere introduction implied by the title. It was way too late. The Tribunal had bent over backwards to accommodate the Respondent and they had still failed to comply with the Tribunal's clear directions. The Tribunal decided to exclude the document and made no further reference to it.
19. Mr Harrison sought to challenge Ms Cookson's ability to bring the proceedings on the Applicant's behalf because she is not a lawyer. The Applicant had only understood that the Respondent wished to do this from the Opening Submissions document and immediately provided written authority for Ms Cookson to represent him by letter dated 2<sup>nd</sup> September 2022.
20. Neither the Tribunal nor the Respondent are or have ever been in any doubt as to the fact that the Applicant has brought the application through Ms Cookson. The other lessees had done the same with their case. If the Respondent had raised the issue when they should have done, at the outset of the proceedings, it is clear that the Applicant would have arranged to remedy any breach of the Tribunal rules. It would be unjust and disproportionate to put a decision on this case off any longer if any further such arrangements were required. It also does the Respondent little credit to rely on technicalities given their wholesale failure to comply with the Tribunal's directions. The Tribunal decided to continue hearing the case and to hear what Ms Cookson had to say on the Applicant's behalf.
21. In relation to the 2016 year, the Applicant sought a determination that £134.28 in relation to insurance and £12 in relation to an emergency line, totalling £146.28, were not payable in accordance with the previous decision of the Tribunal. Previous Tribunal decisions are not binding but there would normally have to be a reason to depart from them in the form of evidence or submissions which the previous Tribunal did not have the opportunity to consider. In this case the Respondent claims to have extended the benefit of the Tribunal decision to the Applicant as well as the other two lessees and does not seek to alter this. On that basis, the Tribunal decided to follow its predecessor and hold that the sum of £146.28 is not payable by the Applicant.
22. As already mentioned, the Upper Tribunal determined that none of the service charges for 2017 were payable to the Respondent due to their

failure to comply with section 20B. Mr Harrison wanted to run an argument that the fault lay with the RTM company for not producing year-end accounts in accordance with the lease but there are two problems with this.

23. Firstly, this argument was contained in his Opening Submissions document which has been excluded. The Respondent gave no notice of the argument and it would be grossly unfair on the Applicant to allow it to be raised so late in the proceedings.
24. Secondly, the decision of the Upper Tribunal is compelling. Even if the Respondent were permitted to run the argument, the Tribunal does not see how it obviates the Upper Tribunal's reasoning or could allow the First Tier Tribunal to depart from it.
25. Therefore, the Tribunal further holds that the service charges demanded by the Respondent in relation to 2017 are not payable in their entirety.
26. The Respondent also sought in the demand dated 22<sup>nd</sup> July 2020 to recover from the Applicant a "DRA referral fee" of £216, a "DRA file review fee" of £474 and a fee of £390 for "DRA pre legal correspondence", totalling £1,080. The Applicant also pointed to "Admin charges" of £60 and £80 and court fees of £330. The Tribunal is not clear exactly how these charges arose but they would appear to be for expenses incurred in chasing the Applicant for the service charges which have been determined above not to be payable. Either way, the Respondent has not presented a case justifying the charges and the Tribunal holds that they are not payable.
27. The Tribunal has the power under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to order that the Respondent's costs of the proceedings may not be added to the service charge or charged to the Applicant. The application has succeeded while the Respondent has failed to follow directions and sought to rely on technicalities or arguments which should have been raised earlier. In the circumstances, the Tribunal grants orders under both section 20C and paragraph 5A.

**Name:** Judge Nicol

**Date:** 3<sup>rd</sup> November 2022

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (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 provisions 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.

#### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

#### **Section 20C**

- (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, residential property 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 that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

### **Section 27A**

- (1) An application may be made to the 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 the 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.