



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

Tribunal Case Reference : **LON/00BK/LSC/2023/0103**

Property : **Flat 4, 36 Buckingham Gate,
London SW1E 6PB**

Applicant : **36 Buckingham Gate Ltd**

Representative : **Faraday Property Management**

Respondents : **Jeremy White
Philippa White**

Type of Application : **Reasonableness and payability of service charges**

Tribunal : **Judge Nicol**

Date of Decision : **21st August 2023**

DECISION

The application is struck out for lack of jurisdiction in accordance with rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

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

Reasons

1. The Applicant is a company formed by some of the lessees of the 36 flats at the mansion block at 36 Buckingham Gate. Following enfranchisement in 2008, the Applicant became the freeholder. The Respondents did not participate in the enfranchisement and are lessees of one of the flats.

2. Unfortunately, the parties have been in dispute about service charges. The Tribunal issued a lengthy decision on 5th June 2014 (case ref: LON/ooBK/LSC/2013/0608) which the parties hoped would be definitive. However, by application dated 29th April 2023, the Applicant sought declarations from the Tribunal on the following two issues:
 - (a) the date that the first service charge contribution can be demanded for the current year, if the managing agent has not certified the accounts for the preceding year before 25 March; and
 - (b) can the lessee delay payment of a service charge demanded for the current year until they have completed a section 22 invoice review for the preceding year.
3. The Tribunal issued directions on 4th April 2023. They provided for the matter to be decided on the papers and neither party objected.
4. It is unfortunate that it was not picked up previously by either the Tribunal or the parties, but the Tribunal has no jurisdiction to issue declarations. Declarations are a standard remedy in the courts but the Tribunal is not in the same position. The Tribunal may only do what statute specifically says it can do.
5. Under section 27A of the Landlord and Tenant Act 1985 the Tribunal may consider the payability of specific service charges. In doing so, the Tribunal may have to consider how to interpret the lease and this could, theoretically, include answering the two issues brought up by the Applicant. However, without any specific service charges to consider, the Tribunal cannot consider these issues in the abstract.
6. Having no jurisdiction, the Tribunal is bound to strike out the application under rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Judge Nicol

Date: 21st August 2023

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 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.