



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

Case Reference : **BIR/37UF/LSC/2022/0028**

Subject Properties : **Flats 26, 30, 31, 36, 42, 70 and 73
St Crispins Court
Stockwell Gate
Mansfield
Nottinghamshire
NG18 5GL**

Applicants : **(1) Mr Alan Ashford (26)
(2) Mrs Doris Otomewo (30)
(3) A P Charles Investments Ltd (31)
(4) Ms Nadina Rauf (36)
(5) Mr Alan Paul Hanson and Mrs
Camilla Hanson (42)
(6) Mr Paul Phelan (70, 73)**

Representative : **Aaron Charles**

Respondent : **RMB102 Limited**

Representative : **J B Leitch**

Type of Application : **(1) Application under section 20C of
the Landlord and Tenant Act 1985 for
an order for the limitation of costs
(2) Application under paragraph 5A of
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002 for an
order reducing or extinguishing
liability to pay administration charges
in respect of litigation costs
(3) Application for the reimbursement
of fees**

Tribunal Member : **Deputy Regional Judge Nigel Gravells**

Date of Decision : **04 September 2023**

DECISION AND ORDERS

Introduction

- 1 On 18 July 2023 the Tribunal issued its Decision on the Applicants' application under section 27A of the Landlord and Tenant Act 1985 (case reference BIR/37UF/LSC/2022/0028).
- 2 The Tribunal upheld the Applicants' challenge to the Respondent's retrospective reapportionment of the service charge costs for the service charge years 2015, 2016 and 2017; and the Tribunal determined that, by virtue of section 20B of the Landlord and Tenant Act 1985 ('the 1985 Act'), the Applicants are not liable to pay additional service charge charges demanded in respect of those years.
- 3 By Directions issued on the same date, the parties were invited to make representations in respect of the applications made by the Applicants under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').
- 4 The Applicants included in their representations a further application for the reimbursement of the application fee (£100.00) and the hearing fee (£200.00).

Section 20C of the Landlord and Tenant Act 1985

- 5 Section 20C of the 1985 Act provides (so far as material) –
 - (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 ... the First-tier Tribunal ... 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.
 - ...
 - (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.
- 6 Although the Respondent initially submitted detailed representations arguing against the making of a section 20C Order, it subsequently withdrew those representations. It confirmed that it would not be seeking to recover from the Applicants any of its costs incurred in connection with the present proceedings; and it expressed the view that it was therefore not necessary for the Tribunal to make a determination on the section 20C application.
- 7 However, that application remains extant and, in the interests of conclusiveness, the Tribunal considers it just and equitable to make an order that the Respondent's costs incurred in connection with the present 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 Applicants.
- 8 It is clear from the wording of section 20C(1) that the Tribunal has no jurisdiction to make an order in favour of any person who is not an Applicant or who is not specified in the application: see *Re SCMLLA (Freehold)* [2014] UKUT 0058 (LC).

- 9 However, if the Respondent were to seek to recover its costs incurred in connection with the present proceedings through the service charge from residential leaseholders at St Crispins Court who were not Applicants or not specified in the application, those leaseholders would be entitled to make their own application to the Tribunal under the 1985 Act.

Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

- 10 Paragraph 5A of Schedule 11 to the 2002 Act provides (so far as material) –

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

- 11 The Respondent accepts – and the Tribunal determines - that the Applicants' leases do not permit the Respondent to recover its litigation costs directly from the individual Applicants as an administration charge. It follows that the Applicants have no liability to pay an administration charge in respect of litigation costs and that paragraph 5A is not engaged.

Reimbursement of fees

- 12 Although the Applicants' application for the reimbursement of fees is stated to be made under section 29(4) of the Tribunals, Courts and Enforcement Act 2007, the jurisdiction of the First-tier Tribunal to order the reimbursement of fees is contained in rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

- 13 Since the Applicants were wholly successful in their section 27A application, the Tribunal orders that, **within 28 days of the date of this order**, the Respondent shall reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00.

Appeal

- 14 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

- 15 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

- 16 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- 17 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

04 September 2023

Professor Nigel P Gravells
Deputy Regional Judge