



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

**Case Reference** : **MAN/00EY/LSC/2023/0062**

**Property** : **Whitehill Meadows comprising Holly  
Wood Way, Blackpool, FY4 5FQ,  
Redwood Drive, Blackpool FY4 5GJ,  
Yew Gardens, Blackpool, FY4 4FR,  
Cedar Court, Blackpool, FY4 5FT**

**Applicants** : **Bonnie Whiteside  
Maureen Oxley  
Guy Baxter  
Ian Forster**

**Representative** : **Mr David Bentham**

**Respondent** : **Steven Lavin  
Sue Green**

**Representative** : **Steven Lavin (in person)**

**Type of Application** : **Landlord and Tenant Act 1985 – s27A  
Landlord and Tenant Act 1985 – s20C  
Commonhold and Leasehold Reform  
Act 2002 – Schedule 11 para 5A**

**Tribunal Members** : **Tribunal Judge L. F. McLean**

**Date of hearing** : **12<sup>th</sup> February 2024**

**Date of decision** : **12<sup>th</sup> February 2024**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Applicants' application under Sections 27A and 20C of the Landlord and Tenant Act 1985, and under Schedule 11, Paragraph 5A of the Commonhold and Leasehold Reform Act 2002, are struck out pursuant to Rule 9(3)(d) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013.**

## **The application**

1. The Applicants sought a determination pursuant to s.27A Landlord and Tenant Act 1985 as to whether they were required to pay to the Respondent certain sums by way of service charge for the service charge financial year ends 2017 to 2024 inclusive.
2. The Applicants sought an order under Section 20C Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the Respondent in connection with these 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 Applicants.
3. The Applicants sought an order pursuant to Commonhold and Leasehold Reform Act 2002, Schedule 11, Paragraph 5A, reducing or extinguishing the Applicants' liability to pay administration charges in respect of litigation costs.
4. The Respondents applied for an order striking out the Applicants' application on the basis that the case, or the manner in which it was being conducted, was frivolous or vexatious or otherwise an abuse of the process of the Tribunal (Rule 9(3)(d)).

## **Background**

5. The dispute concerns a purpose-built residential development known as Whitehill Meadows comprising Holly Wood Way, Blackpool FY4 5FQ, Redwood Drive, Blackpool FY4 5GJ, Yew Gardens, Blackpool, FY4 4FR, and Cedar Court, Blackpool, FY4 5FT ("the Development")
6. The Applicants are tenants of various dwellings situated in the Development, each under a tripartite long lease which was granted by Redrow Homes Limited, and with Whitehill Meadows Management Company Limited ("WMCL") as the designated management company for the Development.
7. The Respondents are two private individuals. They have served as directors of WMCL. The Applicants contend that the Respondents were removed from their positions during an extraordinary general meeting of the members and that the Applicants were appointed in their place. The Respondents dispute that their appointments have been validly terminated. It is common ground between the parties that this issue is the subject of live proceedings which were commenced in the High Court in Manchester, in December 2023.

8. The crux of the dispute relates to two key issues. The Applicants believe that they were charged excessive service charges in recent years, which they say is due to the conduct of the Respondents in their role as directors of WMCL. The Applicants further allege that the Respondents have failed to hand back all of the relevant financial information to the “new” directors. The Respondents dispute both of these allegations.
9. The Respondents applied for an order striking out the Applicants’ application on the basis that the case, or the manner in which it was being conducted, was frivolous or vexatious or otherwise an abuse of the process of the Tribunal (Rule 9(3)(d)), given that they were not parties to the leases in question and so could not be made the subject of any of the applications. This was resisted by the Applicants, whose case is that they have exhausted all other alternatives to obtaining the information they seek.
10. The application to strike out was listed for a hearing which took place remotely on 12<sup>th</sup> February 2024 via the HMCTS Video Hearings Service. The Applicants were represented by Mr David Bentham, who is an employee of Homestead CSL. The Applicants asserted that Homestead is the new managing agent retained by WMCL to provide estate management services and has also been appointed as the company secretary of WMCL. Mr Lavin appeared in person. Ms Green did not appear and Mr Lavin said that she was content for him to deal with the application alone.
11. The Tribunal considered the parties’ oral and written submissions.

### **Relevant Law**

12. The relevant sections of the Landlord and Tenant Act 1985 read as follows:-

#### **18 Meaning of “service charge” and “relevant costs”**

(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.

### **19 Limitation of service charges: reasonableness**

(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 provision 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.

### **20C Limitation of service charges: costs of proceedings**

(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 leasehold valuation tribunal or the First-tier 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 the county court;
- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

### **27A Liability to pay service charges: jurisdiction**

(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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence, of any question which may be the subject of an application under subsection (1) or (3).

13. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides as follows:-

**Limitation of administration charges: costs of proceedings**

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.

(3) In this paragraph—

- (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
- (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings

## **Application to strike out**

14. The Tribunal indicated that as the Applicants' case was originally formulated, it could not succeed because an application can only be properly made under Section 27A against a person to whom a service charge is payable under the terms of the lease, typically the landlord or management company, or against a person from whom payment is sought under the terms of the lease. A landlord or management company has a separate legal personality which is distinct from that of its directors, secretaries or other officers (whether past or present).
15. The issue therefore was whether the Tribunal should grant the application to strike out, or to exercise its discretion to case manage the matter so that it could proceed against the correct party, which would be WMCL, and thereafter consider making orders for third party disclosure against the Respondents.
16. A complicating factor in that proposal was the overlapping dispute in the High Court about the identity of the proper officers of WMCL. The Tribunal observed that it would seem pointless to substitute WMCL as Respondent as long as there was a dispute about who was authorised to represent it in proceedings.
17. The Tribunal indicated that one option would be to add WMCL as a co-respondent and stay or adjourn proceedings until after the High Court had resolved the issue regarding the appointment and removal of its directors. Mr Lavin was reluctant to agree to this as he did not want the situation hanging over his head, as he put it.
18. By way of illustration of the point, the Tribunal asked Mr Bentham to explain why he had submitted a skeleton argument before the hearing, in which he had indicated that WMCL was the Respondent in this application, whereas he had signed the application form listing Mr Lavin and Ms Green as respondents. He suggested that it must have been a typing error as he accepted that WMCL should have been named as the respondent in the case.
19. As an aside, it emerged that Mr Bentham had not served a copy of his skeleton argument on the Respondents, as he had assumed that they would not attend the hearing.
20. The Tribunal also then observed that Mr Bentham had purported to sign the skeleton argument "on behalf of" WMCL. When asked why, he said that his management company, Homestead, had been appointed as the company secretary. The Tribunal put it to Mr Bentham that he could not purport to represent both sides in a dispute, let alone one which was not yet even formally a party to the proceedings. Mr Bentham was unable to offer a coherent explanation for this save to suggest that the Applicants had been put into a position where they had to take action against their own management company in order to make headway in the dispute. The Tribunal noted the

Applicants' predicament, but also that this did not justify the approach which they had taken, and Mr Bentham's role in particular.

21. Mr Bentham submitted that if the Applicants' case was struck out, then it would have represented a waste of time and resources, as the Applicants would simply re-submit their application afterwards, correctly pleaded.
22. Given Mr Bentham's lack of clarity as to whether it was intended that WMCL should have been named as Respondent in the original application form, and given that he could not satisfactorily explain whether he was acting for or against WMCL, the Tribunal concluded that it was not appropriate to exercise its discretion to salvage the proceedings and that they should indeed be struck out as an abuse of process.
23. At the conclusion of the hearing, Mr Lavin indicated that he would be grateful if the Tribunal would consider making an order that the Applicants pay his costs. The Tribunal did not have time to consider such an application and instead directed that any application under Rule 13 should be made in writing following receipt of this Decision, whereupon the Applicants and/or their representative will be given an opportunity to respond.

**Name: Tribunal Judge L. F. McLean**

**Date: 12<sup>th</sup> February 2024**

## **Rights of appeal**

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).