



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

Case Reference : CHI/43UG/LAM/2023/0005

Property : Trotsworth Court, Christchurch Road, Virginia Water, GU25 4AG

Applicant : Sharad Awasthi

Representative : None

Respondent : Trotsworth Court Association Limited

Representative : Property Management Legal Services Limited

Type of Application : Appointment of Manager, Section 24 Landlord and Tenant Act 1987. Application for an Order under S.20C Landlord and tenant Act 1985

Tribunal Members : D Banfield FRICS, Regional Surveyor (Chairman)
Judge J Dobson
E Shaylor MCIEH

Date of Decision : 6 March 2024

DECISION

Background

1. By an Application dated 5 May 2023 the Applicant sought the appointment of a manager pursuant to section 24 of the Landlord and Tenant Act 1987. The initial application did not identify a proposed manager and also sought dispensation from serving a S.22 Notice.
2. The Tribunal made its determination refusing the Application on 1 February 2024 and made the following Directions:
 - **The Applicant will send any further submissions in respect of the cost application only to the Respondent and electronically to the Tribunal within 14 days of the date of this determination.**
 - **The Respondent will send a reply to the Applicant and electronically to the Tribunal withing 28 days of the date of this determination.**
 - **The Tribunal will determine any costs applications on the papers and provide a supplemental decision in writing as soon as practicable thereafter.**
3. Submissions were received from the Respondent dated 19 February 2024 in which it stated that the Applicant had not sent any further submissions and their response was therefore in answer to the reasons set out in the Applicants' application form dated 3 July 2023.
4. The Respondent indicates that as they have the benefit of insurance their liability is restricted to £1,200, the Applicants' share being £15.38.
5. The Respondent refers to the numerous grounds cited by the Applicant in support of their application which they say "simply do not hold up to scrutiny. Of the matters cited in the Applicant's application, they are either outside of the Tribunal's jurisdiction under section 24, or the Applicant failed to persuade the Tribunal to find in his favour on those points".
6. The Respondent says that the application must fail on the grounds that:
 - The section 24 application failed and it would therefore be neither just nor equitable for aS.20C order to be made
 - The Tribunal will consider the practical and financial consequences for the parties (*Conway v Jam Factory Freehold Limited* [2013]UKUT 592 (LC))
 - The Respondent is a "not for profit" resident's management company
 - An order interfering with the parties' contractual rights should not be interfered with lightly (*Re SCMLLA* [2014] UKUT 58 (LC))

- Whilst not applied for by the Applicant an order for reimbursing fees should not be granted for the above reasons.

The Law - Limitation of service charges: costs of proceedings.

7. “(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.
 - (2) The application shall be made-...
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal...”
 - (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.”

Decision

8. At paragraph 24 of the decision in *SCMLLA (Freehold) Ltd, Re Cleveland Mansions, and Southwold Mansions* [2014] UKUT 58 (LC) the Deputy President stressed that as an order under section 20C interferes with the parties’ contractual rights and obligations, it ought not to be made lightly, or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances.
9. At paragraph 75 in *Conway & Ors v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC) he said: “ In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.”
10. Given the relatively modest costs incurred by the Respondent due to their insurance cover the financial consequences to either party are not significant.
11. However, this is a case where the Applicant has been wholly unsuccessful in their application and, however modest the costs, the Tribunal determines in light of the case authorities and the circumstances of this case that the Respondent company should not be prevented from recovering costs from the Applicant through the service charge.
12. The Applicant has not made an application for reimbursement of Tribunal fees. However, for the avoidance of doubt , the Tribunal determines that if such an application were to be made it should be refused for the same reasons referred to in determining the S.20C application.
- 13. The application for an Order under Section 20C of the Landlord and Tenant Act 1985 is therefore refused.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.