



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

Case Reference	: MAN/ooCA/LSC/2023/0051
Premises	: 3 Burbo Mansions, Burbo Bank Road South, Blundellsands, Liverpool, L23 6SP
Applicants	: (1) Frances Eaton (2) Walter Eaton
Respondents	: Burbo Mansions (Crosby) Management Company
Represented by	: Mr J Moore, Counsel, instructed by Cullimore Dutton
Type of Application	: under s.27A of the Landlord and Tenant Act 1985
Tribunal Member	: Judge P Forster Mr I James MRICS

DECISION

Decision

- (1) Under the terms of the Lease, the Respondent is able to recover as part of the service charge a sum for anticipated future expenses and the Applicants are liable to pay this charge.
- (2) The Tribunal does not make an order under s.20C of the 1985 Act.
- (3) The Tribunal does not make an order for costs against the Applicants.

Introduction

1. The Tribunal is asked to determine the recoverability and reasonableness of the service charges that have been made in respect of 3 Burbo Mansions, Burbo Bank Road South, Blundellsands, Liverpool, L23 6SP (“the Premises”). The application concerns the 2019, 2020, 2021, 2022 and 2023 service charge years. The application is made under s.27A of the Landlord and Tenant Act 1985 (“the Act”).
2. Frances Eaton and Walter Eaton (“the Applicants”) are the registered leasehold proprietors of the Premises registered at HM Land Registry under title number MS628021. Their title is derived from a lease dated 22 December 2015 (“the Lease”) made between (1) Burrello Ltd. as landlord and (2) the Applicants as tenant and (3) Burbo Mansions (Crosby) Management Company Ltd. (“the Respondent”) as the management company.
3. The service charges are payable to the Respondent under the terms of the Lease. The Respondent was incorporated to manage the common parts of the Premises. There are twenty-four issued shares in the Respondent company and each apartment in the Premises carries with it one share.
4. The Applicants have applied for an order under s.20C of the Act to prevent the Respondent’s from charging the costs incurred in connection with the proceedings as part of the service charge payable under the terms of the Lease.
5. The Premises is a three-storey purpose-built art Deco property built in the 1930s overlooking Crosby beach. It houses 24 apartments. The Tribunal did not inspect the property but both its members heard a case in 2021 in respect of the same Premises and it noted then that a Tribunal in December 2014 described Burbo Mansions as “... *a striking and distinctive building in an enviable location but one which was clearly in need of ongoing maintenance which due to the nature and style of the architecture and construction was likely to be costly*”.

6. The Applicants represent themselves and the Respondent is represented by Mr Moore, Counsel.
7. The Tribunal issued directions on 23 August 2023 and additional directions on 27 October 2023. The parties were required to exchange statements of case, copies of all documents on which they intended to rely for the years in dispute and any witness statements. The Tribunal has been provided with an agreed bundle of documents. The Tribunal heard evidence from the Applicants and Ms Robertson, the managing agents' operations manager, and submissions on behalf of both parties before it reserved its decision.

The Applicants' case

8. The Applicant's initially indicated that they wished to challenge the charges made for gas, but this part of the application was withdrawn at the hearing.
9. The Applicants assert that there is no provision in the Lease for the collection of a reserve fund and therefore the Respondent is unable to make a charge for and recover the money that has been claimed for the service charge years 2019 to 2023. The Applicants make it clear that they have paid the service charges that have been levied and they are not in default.

The Respondent's case

10. The Respondent relies on two previous First-tier Tribunal decisions in respect of Burbo Mansions which both addressed the issue of a reserve fund under the relevant clause in the Lease: MAN/ooCA/LSC/2014/00093 dated 3 December 2014 ("the 2014 Decision") and MAN/ooCA/LSC/2019/0039 dated 4 February 2021 ("the 2021 Decision"). The Applicants in the present case were parties to the 2014 proceedings.
11. It is submitted that by clauses 5(1)(f) and (h) of the Lease, as varied by the Deed of Variation, provision is made for payment by the Applicants of a charge by reference to expenses and outgoings incurred by the Respondent which includes those expenses not only actually incurred but also those anticipated to be incurred.

The Law

12. The law relevant to the case is set out in the Annex.

Reasons for the decision

13. The point of dispute concerns the entitlement of the Respondent to collect funds in advance and to retain them from one service charge year to the next in a reserve fund.

14. This issue was determined by the First-tier Tribunal in 2014 and because its decision was not the subject of an appeal it became definitive of the rights of the parties. The 2014 decision continues to bind the leaseholders who were party to it, including the Applicants in the present case. It is not open to them to raise the same issue again.
15. Clause 5(1)(f) of the Lease, added by the Deed of Variation, allows money to be demanded as reasonable provision for anticipated expenditure of a recurring nature. Any such provision is treated as, or, in the language of the clause, is “deemed” to be, part of the landlord’s expenses and outgoings for the year in which it is collected.
16. The First-tier Tribunal in the 2021 proceedings came to the same conclusion. The Upper Tribunal did not give permission to appeal the 2021 Decision and in doing so found that the Tribunal was correct in its view of the meaning and effect of the Lease.

s.20(1)C of the Act

17. The Applicants have applied under s.20(1)C of the Act for an order that all or any of the costs incurred by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
18. The Tribunal has a wide discretion under s.20(1)C. It must look at all the circumstances and do what is just and equitable. The factors to be considered go beyond simply the outcome of the proceedings.
19. The 2014 proceedings concerned the liability and reasonableness of service charges. The Applicants in the present case were parties in the 2014 case and were bound by the decision. The Tribunal decided that the service charges were payable, and it addressed clause 5(1)(f) of the Lease.
20. Against this background, the Respondent in the present case was brought into the proceedings to defend its position. In all the circumstances the Tribunal concludes that it would not be reasonable to make an order under s.20C of the Act.

Costs

21. The Respondents submit that the Applicants have acted unreasonably in making the application and their conduct of the proceedings. It is said that the Applicants refused to engage in mediation to resolve the dispute. On investigation it was established that what was offered amounted to no more than discussions to be chaired by Ms. Robertson, the operations manager of the company that was about to be appointed as managing agent. This was not mediation in the sense of independent talks.

22. The present case is the fourth set of proceedings that the Tribunal is aware of. There is a history of unhappiness that goes back more than ten years. At the root of the problems is a lack of communication between the Respondent and many of the leaseholders. The Applicants have complained about the difficulties they have experienced in obtaining information about the expenses that have been and are to be incurred. As shareholders they and all the other leaseholders should be given the opportunity to scrutinize and approve proposed expenditure, but this has been denied to them because of the failure to hold annual general meetings.
23. The Tribunal does not find that the Applicants have acted unreasonably in making their application nor in the way they have conducted the proceedings. They may have lost the case but in this forum, costs do not follow the event. Absent any constructive communication on the part of the Respondent, the Applicants had little other course but to come to the Tribunal. No order for costs is made against the Applicants.

Dated 24 April 2024

Judge P Forster

ANNEX

S.18 of the Landlord and Tenant Act 1985 defines “service charges” 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.

S.19 of the 1985 Act deals with limitation of service charges:

- (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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (1) An application may be made to a leasehold valuation 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.

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

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.