FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LSC/2023/0377**
Property	**:**	**Flat 210, 130 Clapham Common Southside, London SW4 9DX**
Applicant	**:**	**Jamie Henderson**
Respondent	**:**	**Latitude Management Company Ltd**
Representative	**:**	**JB Leitch Solicitors**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 an application under s.20C.**
Tribunal members	**:**	**Judge Simon Brilliant** **Mr Richard Waterhouse FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**26 February 2024**
Date of review	**:**	**13 June 2024**

DECISION

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1. Both parties have requested permission to appeal the decision dated 26 February 2024.

2. The Applicant subsequently withdrew her application.

3. The Respondent's application concerns the s.20C order made in favour of the Applicant.

4. It is a pity that the excellent written submissions in opposition to the application were not before us at the time that we made our decision.

5. The application concerns both (a) our jurisdiction to have made a s.20C order in respect of leaseholders other than the Applicant and (b) the merits of the order which we made

6. s.20C provides as follows:

> *(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. …

(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.

7. In the Applicant's Application Notice dated 9 October 2023, when filling out the section to specificy any other person to be included within the s.20C application, he commented:

"All leaseholders in the block should not be expected to pay the landlord's legal costs. Several of us have tried to resolve this issue with the managing agent who has tried to bully us and have employed stalling tactics. None of the leaseholders should have to pay. The query relates to a clear provision in the lease. A property manager should not need to seek advice on such a simple matter and leaseholders should not be liable for these costs."

8. Our decision confirmed that the Applicant made the s.20C application on behalf of all the tenants in the block and it was considered just and equitable that the Respondent passes only 20% of its costs through the service charge.

The Respondent's submissions

9. The Respondent now says that we had no jurisdiction to make such an order.

10. Our attention has now been drawn to the decision of the Upper Tribunal in Plantation Wharf Management Ltd v Fairman [2020] L&TR 7.

[56] It seems therefore that to require a person "specified" under s.20C to have given consent or authority to the tenant making the application on their behalf is entirely consistent with basic jurisdictional principles. I therefore conclude that for a person to be validly "specified" under s.20C(1) that person must have given their consent or authority to the applicant in whose application the person is specified (that is named or otherwise identified). The issue of authority may be easier to resolve where the representative is legally qualified, as is evident from the Tribunal decision in Rotenberg, but, whatever the status of the representative, it is essential that the representative has been properly authorised to act.

[57] The Tribunal has some sympathy with Mr Low. In making the statement on his application form that he sought a s.20C order in favour of all the leaseholders on the estate, he was acting out of public-spiritedness, and I accept that a significant number of those leaseholders gave him their support. Moreover, the point upon which the appeal has been decided was not a point raised at any stage by the appellant, and it required the diligence of the Tribunal, when

permission to appeal the decision of the FTT was being sought, to draw the attention of those involved to the issue.

[58] It does not, however, seem to me that sympathy for Mr Low can or should affect the result of this appeal. There can be no doubt, in my judgment, that the issue in question goes to jurisdiction. The order made by the FTT, as explained following enquiry by this Tribunal, was far too wide, and in the absence of any proof of the consent or authority of leaseholders being given it must follow that the order be set aside save and insofar as it provides protection to Mr Low himself. The appeal is therefore allowed.

11. Our attention was also drawn to the decision of the Upper Tribunal in Firstport Property Services Limited v Various Leaseholders of Switch House [2023] UKUT 21 (LC).

[14] The first ground of appeal from the section 20C order is that the no-one except the 14 leaseholders was "specified in the application" as required by section 20C(1). Therefore, following the Tribunal's decision in Plantation Wharf Management Ltd v Fairman [2020] L. & T.R. 7 the FTT was not in a position to make an order in favour of all the lessees in the absence of consent or authority given by the non-party lessees to 4 the making of an application on their behalf. That is clearly correct and the respondents have helpfully conceded this ground.

12. The submission concludes that in this case the Applicant provided no evidence that he had the consent of the non-applicant leaseholders to seek the s.20C order on their behalf, or their authority to do so. No evidence relied upon by the Applicant deals with the consent or authority of any of the non-applicant leaseholders. There was no evidence of this before the Tribunal.

13. In those circumstances, it is said, the Tribunal should as a matter of law have confined the scope of the s.20C Order to the leaseholder who was party to the Application. In making it wider which it did, it strayed beyond the limits of its jurisdiction. That amounts to a straightforward error of law. Permission to appeal should be allowed on this basis

The Applicant's submissions

14. The submissions of the Applicant on jurisdiction are as follows:

"As explained to the Respondent's legal representative (and known by the managing agents), there is an active group of leaseholders who have formed a group to deal with issues. I liaised with the group about the issue and agreed I would take it forward on behalf of the leaseholders as a whole as there was no point in multiple claims being lodged. I joined a Teams call to explain what was going on and what I intended to do. I gave regular updates to the group. Members of the group are willing to produce affidavits to support my assertion".

Conclusion

15. Unfortunately for the Applicant, this is no answer to be Respondent's submissions. In fairness, panel 9 of the Application Notice makes no reference

to the need for documents showing that the other leaseholders have given express authority for a s.20C application to be made on their behalf.

16. Rule 53(1) of the Tribunal Procedure (First–tier Tribunal) (Property Chamber) 2013 provides that on receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 3, whether to review the decision in accordance with rule 55 (review of a decision).

17. Rule 55(1) provides that the Tribunal may only undertake a review of a decision—

> (a) pursuant to rule 53 (review on an application for permission to appeal); and
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> (b) if it is satisfied that a ground of appeal is likely to be successful.

18. We are satisfied that the ground of appeal on our jurisdiction is likely to be successful.

19. Accordingly, but without enthusiasm, we review our original order and make no s.20C order against the Respondent.

Simon Brilliant 13 June 2024.

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