FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2024/0196**
Property	**:**	**Flat 12A, 32 Grosvenor Street, Mayfair, London W1K 4QS**
Applicant	**:**	**Home Health Services Limited**
Representative	**:**	**Mr Pennington-Legh, instructed by CPM Legal Limited and accompanied by Dr & Mrs Rohatgi**
Respondent	**:**	**32 Grosvenor Street Management Limited**
Representative	**:**	**Mr H Rowan of Counsel, instructed by Mills Chody LLP together with Miss Ajetha (Paralegal) and Mr Mike Sewry, Director of the Respondent**
Type of Application	**:**	**Determination of liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Dutton** **Mr J Naylor MRICS**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 27 November 2024**
Date of Decision	**:**	**9 January 2025**

DECISION

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DECISION

(i) The Tribunal determines that the service charges before 10 May 2021 are not payable but anything after that date is. The parties are to agree the outstanding sums, if any, which should be paid within 42 days.

(ii) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs for the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks the determination under section 27A of the Landlord and Tenant Act 1985 (the Act) as to the amount of service charges payable by the Applicant to the Respondent in the period 7th July 2017 to 31st December 2021.

Hearing

2. The Applicant was represented by Mr Pennington-Legh of Counsel and the Respondent by Mr Rowan also of Counsel. Immediately prior to the hearing we were provided with some additional copy correspondence, which was added to the Tribunal bundle, which comprised some 410 pages. In addition both Counsel had helpfully produced full skeleton arguments for which we thank them

3. We had the opportunity of considering the contents of the trial bundle before the hearing.

4. In addition, Dr Rohatgi attended and spoke to his witness statement. For the Respondents, Mr Smith of the managing agents was apparently away on holiday and could not be there and nor could Mr McKenzie, although he did say in his witness statement due to health reasons he would not be able to attend the hearing. Mr Sewry who is a director of the management company, although attending did not give any evidence and indeed had not made a witness statement.

Background

5. The Applicants hold under the terms of a lease date 2nd February 2012, made between Grosvenor West End Properties (1), the Respondent (2) and Marketing Exchange for Africa Limited (MEAL) (3). The lease ran from 23rd February 2012 to September 2122. It transpires that the Applicants acquired the lease of the property at 12A, 32 Grosvenor Street, Mayfair, London W1K 4QS (the Property) on 24th November 2017 and this was registered in that company's name on or about 14th December 2017.

6. The lease requires the incoming purchaser to give notice of a change of ownership. Under the provisions of clause 3.9.5 of the lease, there is a requirement on every assignment to give notice to the lessors' solicitors within one month and to pay a fee. In addition, there is an obligation on the purchaser to procure the seller's shares in the respondent company and to give notice of these matters to the superior lessors' solicitors. There is also a requirement to

enter into a direct deed of covenant with the Respondent. This requirement to notify the change of ownership is the basis upon which the first part of the dispute arises.

7. The next element relates to impact of section 20B of the Act as it is said on the part of the Applicants that they received no notices in relation to service charges until, it is said, 30th July 2022 when the managing agents, Philip Smith of Smith Waters LLP, made service charge demands for the period 1st July 2017 to 31st December 2021 totalling some £20,627.19.

8. We will deal first with the question of service, or otherwise, of the notice of completion as required under the terms of the lease as we have set out above.

9. At the time of the purchase the Applicants were sent the Leasehold Property Enquiries form and it would appear a document headed standard procedure note (non-FH) revised 2016. On this document the details of the management company and the freehold company solicitors is shown as Redferns Solicitors, FOA John McKenzie, 34A St Thomas Street, Weymouth, Dorset showing a telephone number and a DX address of DX8763 Weymouth.

10. We understand that on 22nd November 2017 the solicitors for the Applicants wrote to Smith Waters confirming that contracts had been exchanged and asking for certain information.

11. Completion took place on 24th November 2017 and was registered at HM Land Registry on 14th December 2017. In the papers before us is a copy of what purports to be the notice of transfer dated 5th December 2017 addressed to Mr McKenzie at the DX address in Weymouth enclosing the notice of transfer and charge in duplicate. Here lies the first area of dispute. It is said by the Respondents that they never received this document. Mr McKenzie, the legal advisor to the Respondents made a witness statement but did not attend to speak to it. He says in his witness statement that he had been a solicitor in practice until November of 2016 when the firm of Redferns was closed down by the Solicitors Regulation Authority. He goes on to say that the letter enclosing the notice of transfer was sent to the DX address of Redferns but indicates that Redferns withdrew from the DX system in late 2013 when they moved offices. He goes on the say that he understood that the purchaser's solicitors acting for the Applicant would have contacted his company to ascertain the exact fees required upon registration and that they would have been told at that time that Redferns were not in practice and other details were given.

12. At this time, it should also be noted that there were apportionment of service charges and that the sum of £2,389.62 was sent to the managing agents representing a proportion of the service charges owed by MEFA and an apportionment for the period from 25th November 2017 to 31st December 2017, owed by the Applicants. This payment was made by the Applicant's solicitors to Smith Waters on or about 25th January 2018.

13. It appears that MEFA went into liquidation in April of 2019.

14. It is therefore the Applicant's case that the Respondents knew or certainly should have known that the company MEFA were no longer the tenants and that instead the Applicants had taken over ownership of the flat.

15. From the Respondent's point of view, they allege that they had no notice of the change on a formal basis and that they continued to issue demands to MEFA until one which appears in the bundle of 29th June 2021. It is noted that for the demand sent in 2016 the registered office of MEFA was used but that this changed, for reasons that are not wholly clear, in May of 2017 when the flat address was used.

16. These demands were reissued by Smith Waters from May of 2017 in the name of Home Health Service Limited and continued through to date. A letter was sent on 10th November containing the various demands explaining the position. This letter indicates an outstanding amount due including the half year July 2022 to December 2022 of £18,225.04. Interestingly in the letter sent in November of 2022 the following comment is made: *"the person I spoke to at your office alluded to the provisions of a Landlord and Tenant Act (section 20B notice). We've taken legal advice and have been advised that such provision does not override responsibility to pay outstanding arrears."* It should be noted that in the Applicant's skeleton argument, the letter dated 30th July 2022 referred to as a demand made by the Respondent, without any admission. The envelope which is included at page 270 in the bundle bears a date stamp of 13th July 2022 which is consistent with a statement of account addressed to Home Health Service Limited setting out service charge demands from 1st July 2017 through to 30th June 2022. This account is in effect in error because there has been credited the sum of £2,894.10 on 7th July 2018, which appears to have nothing to do with this Property. We are not aware of any accompanying letter.

17. It was on 10th November 2022 that a full letter was sent from Mr Smith enclosing more detail and more accounting documentation, in particular the amended demands/statements showing the name of Home Health Service Limited as the paying party.

18. In the meantime, that is between 2017 and 2022, it appears clear that the Applicants through Dr Rohatgi had dealings with Mr Smith and Mr Sewry. There was correspondence between the parties relating to the improvement in fire doors as well as correspondence relating to a licence to carry out works. It seems that the question of the service charges first arose when Dr Rohatgi of behalf of the applicant company sought to extend the lease. At that time, he was told that he would be able to do so but only if the outstanding service charges were cleared. The matter has progressed from there.

19. Insofar as the provisions of section 20B are concerned, details of which are set out below, it is the Applicant's case as set out in their skeleton argument that all costs incurred before the end of February 2021 if it is accepted that the demand dated 13th July 2022 was compliant, would be irrecoverable by reason of section 20B(2).

20. In essence, therefore, there are two matters that we need to consider. The first is whether or not the Applicant did indeed serve notice of change of ownership as

required under the terms of the lease. The second is, if he did not, are they liable for service charges from 2017 to date or whether some of those service charges are not recoverable because of the provisions of section 20B(2).

21. Insofar as the evidence is concerned, we had the witness statement of Dr Subia Rohatgi, which appears in the bundle at pages 69 – 78. This statement is common to both parties, and it does not seem necessary for us to repeat it at any length. Dr Rohatgi did attend the hearing and was cross-examined by Mr Rowan. He confirmed that he was the lessee of another property and was aware that service charges were payable but that this would be on the basis that demands are made on a regular basis, which would have been paid when they were. He indicated that he was not aware of the outstanding service charges until his wife received a letter from Mr Smith indicating that there were arrears of service charges of just under £16,000. Mrs Rohatgi responded on 9th September 2021 asking for backing documentation to be sent to deal with each entry on the statement and that once it had been received, a payment plan would be put forward. In a response to that email, also dated 9th September, Mr Smith said he would put together the individual demands for her. There then followed communications concerning works to the subject flat, in particular there being discussions as to access being given to the caretaker.

22. A licence to assign was granted by the Respondents to Dr Rohatgi on 26th August 2019 following extensive email communication as to the 'nitty-gritty' of the licenced works.

23. In his evidence Dr Rohatgi told us that the caretaker, who had retired in November of 2021 would usually collect the post and deliver it to the various properties. It was also drawn to our attention by Dr Rohatgi that the number of emails that passed between himself and Philip Smith and Mr Sewry bore the heading Home Health Service Limited. This is certainly so, for example, on the letter sent by Mrs Rohatgi on 20th September 2021 concerning the apparent lack of the notice of transfer.

24. When questioned by Mr Rowan he denied that the demands had ever arrived at the flat and there had been no correspondence concerning the non-payment of service charges, save for the exchange we have mentioned above and the eventual delivery of a statement of account with no covering letter in July of 2022. He did confirm that he was not objecting to the quantum of the amounts shown on the demands but denied that he had ever received them and that in his view Smith Waters were at fault for not sending the correct demands to him for the period in dispute. He also said that the fee paid in connection with the licence, which was sent by bank transfer on or about 26th August 2019, was made by the Applicant and not by himself personally.

25. Although Mr Smith was unable to attend the hearing, we did read his witness statement but would give it only so much weight as he was not there to be cross-examined. In his statement he confirmed that he had been the block manager for in excess of ten years. One of his responsibilities was upon sale to deal with the leasehold enquiries and had issued a standard procedure note (SPN) which he accepted he had revised in 2016, which was approved by Mr Sewry the company secretary and director. He accepted that the SPN showed the DX address for

Redferns but he does not indicate whether he was aware of this at the time the SNP was reviewed. He said at paragraph 9 of his witness statement that as far as the change of ownership was concerned, that he could *"only assume that this was because we were not given up to date contact details for the Applicant. Certainly I cannot recall if I was told, although if he had been, then the accounts department would have been informed."* Without this knowledge of the change of ownership demands were continued to be sent to MEFA and that those demands sent to the Property from May of 2017 were never returned. It appears that the procedure is that the accounts team auto-generates demands, print them out and send them out without any covering letter. They would, however, have had the summary of rights and obligations.

26. He acknowledges two payments towards the service charge accounts, one made in January of 2018 and the other on 7th November 2018, which has proved to be false. This we believe is now accepted does not belong to the Applicants and was erroneously credited to their account. He denies any knowledge that MEFA had gone into liquidation in or around April 2019, although does accept that at about that time Dr Rohatgi contacted his company in respect of proposed works, which would require a licence. He cannot say whether anyone cross-referenced this to the records to enquire whether the Applicant had acquired the Property from MEFA. In any event he says the dealing with the licence was passed across to Mr Sewry.

27. In his witness statement he accepts there was communication between himself and Dr Rohatgi in 2019 and 2020 but still did not seem to consider that there had been a change of ownership. It appears it was not until Dr Rohatgi contacted him about a lease extension that the question of arrears came to his attention. At that point the records were updated and demands sent out which had been sent previously to MEFA which had been amended to enclose the Applicant's address and name.

28. The witness statement from Mr McKenzie appears to be largely accepted, certainly paragraphs 1 – 13 inclusive.

29. Accordingly at the hearing we only had live evidence from Dr Rohatgi and the two witness statements from Mr Smith and Mr McKenzie, limited thought that was.

30. We carefully noted the contents of Mr Pemberton Legh's skeleton argument, In submissions Mr Pennington-Legh said that the demands had not been sent at all until 2022 and it was a matter for us to decide on the facts whether they had been received. It was in his submission for the landlords to show on the balance of probabilities that the demands had been received and that they were relevant demands. On the question of posting the demands he said there was no direct evidence from anybody that they had been done, there was no witness statement from Mr Sewry, that the management company had made a number of mistakes and that Mr Smith was not a chartered surveyor and that therefore the certificates if they be certificates did not comply with the terms of the lease.

31. Insofar as the form SPN was concerned, it clearly gave indication to the Respondents that an assignment was imminent. It showed a DX address which meant that it could be used and there was no counter evidence from the

Respondent that the DX was no longer used for the purposes of service of the notice. It should be noted also that the logging of the payment in November of 2018 was not relevant to this case but it showed the continuing error on the part of the managing agents. It was also drawn to our attention that the fact that a number of emails from Dr Rohatgi were sent to the Respondents containing the Applicant's logo and were clearly not from MEFA or from any personal address.

32. He also queried why there were no chasing letters in connection with the outstanding service charges. They had an email address for Dr Rohatgi but they did not use this to remind him concerning payments until 2019 and when information was sought it appears not have been forthcoming. He also drew to our attention that the demand note date of 22nd July appears to show no balancing charges save for the accounts ending December 2018. Counsel submitted that there had been a catalogue of errors and mistakes by the agents and that the lack of any adjusting payments suggests that the demands had been regenerated after the event and were incomplete.

33. Insofar as the notice of assignment was concerned, his submission was that the Applicants were entitled to rely on the SNP document and the details of service that were set out therein. He asked why the Respondent had not carried out any searches of the Land Registry, sent chasing letters or emails to the Applicant if they were unsure as to the identity of the tenants. In any event, his view was that the demands did not comply with the terms of the lease, there were no apportionments, there was no certification, and all that the Respondent had done was to change the name and address on the annual demands and reissue them.

34. For the Respondent, we carefully noted the skeleton argument of Mr Rowan who reminded us that an application to adjourn had been made so that Mr Smith could have given evidence, but this was subsequently withdrawn on objections from the Applicants. His cross examination of Dr Rohatgi in his view indicated that demands were sent to MEFA at the flat address but that these were ignored. His submission was that the Applicant was happy to get the benefit of the alleged missing notice of assignment and we were referred to a number of cases, which we will deal with in our findings sections in so far as they are relevant. It was also brought to our attention that the licence to alter the premises was in the name of Dr Rohatgi and not in the company. Not only was it said there was a failure to provide the notice of licence to assign but also the lack of the deed of covenant meant that the Respondents could continue to send the demands to MEFA and to the registered office on occasions. It was also said that the demands that had been issued were interim demands and there was no condition precedent in respect of same. It was also suggested that in the question of deem service properly addressing the documents did not mean the correct addressee.

35. At the conclusion of the hearing it was suggested that the question of application under section 20C be left until our decision had been made. We should also record that any concerns raised by the Applicants in respect of non-compliance with sections 47 and 48 of the Landlord and Tenant Act 1987, a question of no waiver and a claim for damages were no longer issues that we needed to consider.

Findings

36. We will deal firstly with the issues concerning the service or otherwise of the notice of completion as required under the lease.

37. We have considered all the evidence before us and have come to the conclusion that we prefer that of the Applicant to the Respondent. It was the Respondent who issued the SNP, updated in 2016 still clearly showing the DX address for the solicitors instructed to receive the notices. These notices of transfer of ownership are essential for the purposes of updating records, although in our experience are not infrequently omitted by solicitors acting for purchasers. However, in this case we accept from the evidence before us, including copies of the notices and correspondence at the time, that the Applicant did all they could to serve the notice on the Respondent and it was the Respondent's errors in providing the SNP with false information that has caused the problem.

38. We fail to understand why the Respondents did not realise that there was a new owner of the flat. Not only were they advised in November 2017 that contracts had been exchanged, but they also heard from the solicitors acting for the Applicants with a cheque representing apportioned service charges. If ever a hint were needed, this was it.

39. In addition, it is clear from the correspondence that Dr Rohatgi was in regular contact with Mr Sewry and with the managing agents concerning the proposed alterations to the flat. This resulted in the licence, as well as correspondence concerning a possible lease extension which is when it seemed the managing agents woke up to the fact that they had not been receiving service charges for approximately four years. Why they had not chased in that time is beyond us. It is not as though they have produced letters being written to MEFA chasing for the money. It appears they just went silent.

40. We do not accept that sending demands to the previous owners, possibly to the registered office, but to the flat constitutes sufficient notice to the Applicant under the terms of lease and under the Law of Property Act. We heard from Dr Rohatgi that the porter usually collected the post and delivered to each flat. It is not beyond the bounds of possibility that he saw envelopes addressed to a tenant who he knew no longer occupied the flat and decided not to deliver them any further. He was of course sadly unable to give evidence, but no witness statement had been obtained from him in the past.

41. We appreciate that the Applicant appears still not have dealt with the deed of covenant, which they should do immediately, but that does not in our mind have anything to do with the notice required for the landlord to be able to serve the demands at the correct address. It may continue to be a breach of lease, but we are sure that that can be resolved by the Applicants completing the deed of covenant forthwith.

42. We also bear in mind that there was correspondence from Mrs Rohatgi in 2019 concerning the outstanding service charges and a promise by Mr Smith that he would send the details across. It does not seem that those details were sent for a year and again we do not understand why that was the case. Accordingly, taking the matter in the round and on the balance of probabilities, we accept the Applicant's case that the relevant notice was served as required by the

Respondent and it is the Respondent's failures that has resulted in that document not reaching whoever it should have reached.

43. Accordingly, any suggestion that there was some reason for the Respondents to continue sending the demands to the company that had long since vacated is unacceptable. The letter from Mr Sewry dated 2nd August 2022 recites the letter from Mr Smith sent on 3rd September 2021 when it is quite clear at that time that there was knowledge that the company MEFA had vacated some considerable time ago. The letter says *"In the absence of a notice of transfer MEFA remain the lessee so far as the landlord is concerned and is liable under the lease."* This seems to be a nonsense as clearly if the Respondents were aware of a change of ownership since September 2021, why did they not deal with the demands for service charges arrears before 2022. Mr Sewry in his letter, which inserted the letter from Mr Smith within the contents, was less than complimentary about MEFA's director, Murli Thadani who he says was *"widely detested"* and *"operated on the edge of legality."* The letter goes on the say that Smith Waters would be able to explain why they delayed for so long and apologises on their behalf. In a subsequent email sent on 12th August 2022 by Mr Sewry to Dr Rohatgi the following is said *"In the aftermath of Thadani's death the main priority of 32 GSML was to extract from his estate the money awarded to us following a protracted court case which was the usual Thadani-fabricated nonsense … The sale of Flat 12A came after that at which point the change of ownership was somehow missed. It could even be that the transfer was not handled by John McKenzie but instead by Kevin Bichard of Burlington. John is very thorough and I do not believe he would have overlooked something that he actually received. Kevin was the solicitor we use for non-routine matters of which dealing with MEFA was definitely example. Maybe it fell between these two stools. But again, this is all lost in the mist of time."* A possible explanation as to why the notice of assignment did not reach them?

44. We turn then to the question of section 20B and the recoverability of service charges. The Applicants accept that they are liable for those from 1st January 2022 onwards and indeed we understand they have paid them. The question we need to determine is whether or not the demands sent in July 2022 without a letter but just inserted into an envelope constitute sufficient notice as is required under section 20B(2) or whether the Respondents can rely on the letter sent on 10th November 2022 in which there was an accompanying letter and all the demands going back to 2017 which had been amended to include the Applicant as the person liable to make the payment.

45. It seems to us it is difficult to accept that the posting of a demand in an envelope with no covering letter or explanation can meet the requirements of section 20B(2). In this case, although it could be argued that some of the demand related to estimated service charges, there are as far as we can tell from the papers before us actual charges at least until December 2021 as evidenced by the accounts for the year ended 31st December 2023 which appear on page 314 of the bundle. There does not, however, appear to have been any balancing charge exercise conducted. We conclude, therefore, by reference to various authorities cited to us that section 20B(2) does apply to these demands that were sent through under cover of a letter on 10th November 2022. In our finding, therefore, for the purposes of section 20B(2) it is this date, that is to say 10th November 2022,

which is the appropriate starting point. Eighteen months from there would take it to the 10th May 2021. Accordingly, it is our finding that any service charges incurred before that date are irrecoverable by virtue of the provisions of section 20B(2) of the Act. We would leave the parties to organise any accounting that may be required in this regard as it is not wholly clear to us what sums have been paid for this period. It is also not clear to us which of these charges are subject to any balancing charge given that it seems the accounts to December 2023 show actual charges to December of 2021.

46. We consider that covers the issues raised by the parties. It was suggested that any submissions in respect of section 20C be left until the decision we have made. However, it seems to use that in the light of our decision the only just and equitable order we could make would be that section 20C should apply and that the Respondent would not be entitled to recover his costs as a service charge from the lessee.

47. Whether the Applicant wishes to make any other claims for costs we leave to them to decide, and they will need to make such application as they think appropriate.

48. We would like to take this opportunity of thanking Mr Pennington-Legh and Mr Rowan for their assistance in this case.

Judge: Andrew Dutton

A A Dutton

Date: 9 January 2025

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.